136-330

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1889

No. 1631

LOUIS DE OTEIZA Y CORTEZ

Appellant

vs.

JOHN W. JACOBUS, ETC., & MIGUEL SUAREZ GUANES

Appellees

APPEAL FROM ORDER OF HON. E. HENRY LACOMBE, JUDGE OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED MAY 16, 1890

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1

DEPARTMENT OF STATE.

To any Justice of the Supreme Court of the United States; any Judge of the Circuit or District Courts of the United States in any District; any Judge of a Court of Record of General Jurisdiction in any State or Territory of the United States, or to any Commissioner specially appointed to execute the provisions of Title LXVI of the Revised Statutes of the United States, for giving effect to certain treaty stipulations between this and foreign Governments for the apprehension and delivering up of certain offenders.

2

Whereas, pursuant to existing treaty stipulations between the United States of America and Spain for the mutual delivery of criminals, fugitives from justice in certain cases, Senor Don Emilio de Muruaga, Envoy Extraordinary and Minister Plenipotentiary of Spain accredited to this Government, has made application in due form to the proper authorities thereof, for the arrest of Luis Oteiza, charged with the crime of embezzlement of public funds at Havana, and alleged to be a fugitive from the justice of Spain, and who is believed to be within the jurisdiction of the United States.

3

And whereas, it appears proper that the said Luis Oteiza should be apprehended and the case examined in the mode provided by the laws of the United States aforesaid.

Now, therefore, to the end that the above-named officers or any of them may cause the necessary proceedings to be had in pursuance of said laws, in order that the evidence of the criminality of the said Luis Oteiza

may be heard and considered, and, if deemed sufficient to sustain the charge, that the same may be certified, together with a copy of all the proceedings to the Secretary of State, that a warrant may issue for his surrender pursuant to said treaty stipulations. I certify the facts above recited.

In testimony whereof, I have hereunto signed my name and caused the seal of the Department of State to be affixed. Done at the City of Washington, this fourth day of January, A. D., 1890 and of the Independence of the United States the 114th.

Seal of the Department of State, United States of America.

JAMES G. BLAINE,
Secretary of State.

Complaint.

To SAMUEL H. LYMAN, Esq., a Commissioner of the Circuit Court of the United States for the Southern District of New York, duly appointed and commissioned under Title 66 of the Revised Statutes of the United States relating to extradition.

In the matter of the application by the Consul-General of Spain, at the City of New York, for the extradition of LUIS OTEIZA Y CORTES, charged with embezzlement or criminal malversation of public funds, committed within the jurisdiction of the Kingdom of Spain, viz., Havana, Island of Cuba, under treaty between the United States of America and Spain.

MIGUEL SUAREZ GUANES, of the City of New York, upon his oath, deposes and says, that he is the Consul General of Spain at the City of New York, duly recognized as such by the President of the United States. And this complainant upon his oath complains and alleges, upon information and belief, that one Luis Oteiza y Cortes was the Secretary or Clerk of the Bureau of Public Debt of the Island of Cuba at Havana, and an officer in the employment of the Kingdom of Spain at Havana, Island of Cuba, at the dates hereinafter mentioned; that as such servant and officer he had charge of the public funds and moneys belonging to said Kingdom of Spain, viz.: the Bureau of Public Debt of the Island of Cuba at Havana, Island of Cuba; that on or about the 28th day of December, 1889, the said Luis Oteiza y Cortes, at Havana aforesaid, and within the jurisdiction of said Kingdom of Spain, in the course of

10 his said employment, had in his possession as such clerk or secretary a large amount of public bonds or certificates of indebtedness of said Kingdom of Spain belonging to the public debt of said Island of Cuba, and being a part of the public funds of the Kingdom of Spain, and on said date, viz., the 28th day of December, 1889, and within the jurisdiction of Spain at said city of Havana, Island of Cuba, he, said Luis Oteiza y Cortes, did wrongfully and feloniously embezzle bonds or certificates of indebtedness, belonging to the said public debt of the Island of Cuba, of the value of one hundred and ninety thousand dollars, and converted the same to his own use, and also
11 the coupons of other government bonds of the value of five hundred thousand dollars, and the stub books thereof also.

This complainant, therefore, charges the said Luis Oteiza y Cortes with the crime of embezzlement of bonds or certificates of indebtedness of said public debt of the Island of Cuba, committed within the jurisdiction of said Kingdom of Spain, viz., at the City of Havana, Island of Cuba.

And this complainant further says, that he is informed and believes, the said Luis Oteiza y Cortes, since the commission of said crime, has fled from said Island of Cuba, and is seeking an asylum within the United States of America, where he may now be found. And com-
12 plainant further says, on information and belief, that criminal proceedings have been begun in the City of Havana, Island of Cuba, against the said Luis Oteiza y Cortes, for said embezzlement. And this complainant further says, that the sources of his information and the grounds of his belief, as to the matters above stated by him on information and belief, are the cablegrams sent to him by General Salamanca, the Captain General of the Island of Cuba, which cables being in cipher,

correct translations into English are hereto annexed and made a part of this complaint. This complainant referring to the treaty or convention of extradition between the United States of America and the Kingdom of Spain, of January 5, 1877, and the supplementary treaty thereto of August 7, 1882, therefore prays that a warrant may be issued to apprehend the said Luis Oteiza y Cortes, and forthwith bring him before you, to the end that the evidence of criminality of said Luis Oteiza y Cortes may be heard and considered, and that if, on such hearing. the evidence be deemed sufficient to sustain the charge under the provisions of said treaty, the same may be certified to the proper executive authority of the United States, and that a warrant may issue for the surrender for the said Luis Oteiza y Cortes, and that such other or further steps may be taken as may be in accordance with law and the provisions of said treaty.

Dated New York, January 2, 1890.

MIGUEL SUAREZ.

Subscribed and sworn to before me, this 2d day of January, 1890, by the said Miguel Suarez Guanes.

SAM'L H. LYMAN,
U. S. Comm'r.

Translation of Cipher Telegrams: Havana, December 30, 1889. It is necessary that your Excellency arrest thief Oteiza, Secretary of Bureau Public Debt, who possibly will go from Key West to that city or New Orleans. I am informed he is in Key West and that the

16 Judge there is not disposed to Detain him, for which reason I have telegraphed to the Minister plenipotentiary at Washington, detain him for his crime, and it is necessary that Oteiza should not escape, Salamanca.

January 1st, 1890. Oteiza took passage for New York, Ticket No. 2008, Tampa by "Olivette." It is easy to find out if he stopped on the way by comparing the number of his passenger ticket with the ticket taken up by the conductor, Salamanca.

January 1, 1890. The value of the stolen bonds of the public debt of the Island of Cuba is one hundred and ninety thousand dollars. The date of the robbery is 28th December last past, Salamanca.

17 Havana, January 1, 1890. Secretary of Bureau of Public Debt, Luis Oteiza, fled from here Saturday last in Olivette, taking away with him bonds the Exchequer. It is necessary that he should be detained at Key West, Tampa or New York, and that the bonds should be taken from him, awaiting the proceedings to be sent.

[Here follows the description of his person].

Be watchful in case he should go by another steamer and please inform the Minister at Washington, Salamanca.

Jany. 2, 1890. In addition to the bonds taken, Oteiza, with the coupons belonging to other bonds to the value of 500 thousand dollars & the stub books; make every effort at capture, Salamanca.

18

The President of the United States to any Marshal or Deputy of the United States:

Whereas, a complaint has been made under oath by Miguel Suarez Guanes, Consul General of the Kingdom of Spain at the city of New York, to the undersigned, a Commissioner of the United States for the Southern Dis-

trict of New York, duly appointed as such and authorized to act as a Commissioner under the laws of the United States concerning the extradition of fugitives from justice of a foreign country, under a treaty or convention between the United States and any foreign government charging Luis Oteiza y Cortes, who, as is alleged, is seeking an asylum within the United States, with having committed the crime of embezzlement or criminal malversation of public funds within the jurisdiction of the Kingdom of Spain, which crime is enumerated and provided for by the treaty or convention of extradition between the United States and Spain of January 5, 1877, and August 7, 1882, and which crime is particularly specified and set forth in said complaint. Now, therefore, you are hereby commanded to apprehend the said Luis Oteiza y Cortes, and forthwith to bring him before the undersigned, at his office in the United States Court and Post Office building, in the city of New York, to the end that the evidence of the criminality of said Luis Oteiza y Cortes may be heard and considered, and if on said hearing the evidence be deemed sufficient to sustain such charge under the said treaty the same together with a copy of the testimony taken be certified to the Secretary of State of the United States that a warrant may issue for the surrender of said Luis Oteiza y Cortes, pursuant to said treaty or convention, and that such other or further steps may be taken as may be in accordance with law and the provisions of said treaty. In testimony whereof, I have hereunto set my hand and seal at the City of New York, this second day of January, 1890.

SAM'L H. LYMAN, U. S. Commr., [L. S.] A Commissioner of the United States, duly authorized by the Circuit Court of the United States for the Southern District of New York, to act as a Commissioner under the laws of the United States, concerning the extradition of fugi-

22 tives from justice of a foreign country, under a treaty or convention between the United States and any foreign government.

Proceedings before the Commissioner.

In the matter of the application of the Consul General of Spain, at the City of New York, for the extradition of Luis Oteiza y Cortes, charged with embezzlement, or criminal malversation of public funds, committed within the jurisdiction of the Kingdom of Spain, viz., Havana, Island of Cuba, under treaty between the United States of America and Spain.

23 Before SAMUEL H. LYMAN, Esq., U. S. Commissioner.

NEW YORK, January 3, 1890, 10:30 o'clock A. M.

Present.—The COMMISSIONER, Messrs. OLCOTT, MESTRE & GONZALES (by ANTONIO C. GONZALES, Esq.,) on behalf of demanding Government. United States Deputy Marshal produces the prisoner. The Commissioner asks the prisoner's name.

The Prisoner.—My name is Luis Oteiza y Cortes.

The Commissioner.—Do you understand English?

The Prisoner.—No, sir.

The Commissioner makes known the charge to th prisoner through an interpreter, and asks him wheth

24 he wants an examination. The prisoner states that denies the charge, and wants an examination.

The Commissioner.—Ask him if he prefers an examination, or prefers to go back to Cuba for his trial. *The Prisoner.*—Primarily, to begin with, I want an examination.

The Commissioner.—Tell him that I will set his examination down for to-morrow, and ask him if he will have counsel here to defend him, and state that he has

a right to counsel. The prisoner states that he is not acquainted with the laws here, and as he is a lawyer himself, he thinks it better for him to have a lawyer. 25

The Commissioner.—Ask him if he will get his own lawyer. The prisoner states that he has asked two of his friends to get a lawyer for him.

The Commissioner thereupon adjourns the hearing to Saturday, January 4, 1890, at 2 o'clock, P. M.

NEW YORK, January 4, 1890, 2 o'clock, P. M.

Present.—The COMMISSIONER, Mr. GONZALES and Mr. JUDGE for demanding Government. JACOB P. SOLOMON, Esq., appears for the prisoner. 26

Mr. Solomon asks for an adjournment until Monday. The Commissioner adjourns the hearing to Monday, January 6, 1890, at 2 o'clock, P. M.

NEW YORK, January 6, 1890, 2 o'clock, P. M.

Present.—The COMMISSIONER, Mr. GONZALES and Mr. JUDGE for demanding Government. JACOB P. SOLOMON, Esq., D. EDGAR ANTHONY, Esq., and S. MALLET-PREVOST, Esq., on behalf of the prisoner.

The prisoner is produced by the Deputy Marshal.

Mr. Solomon.—I would ask, if the Court please, to make the preliminary motion that from the affidavit or complaint there should be stricken out the following words: "That as such servant and officer he had "charge of the public funds and moneys belonging to "said Kingdom of Spain, viz.: the Bureau of Public "Debt of the Island of Cuba, at Havana, Island of "Cuba; that on or about the 28th day of December, "1889, the said Luis Oteiza y Cortez, at Havana afore- 27

28 "said, and within the jurisdiction of said Kindom of
"Spain, in the course of his said employment had in
"his possession, as such clerk or secretary, a large
"amount of public bonds or certificates of indebtedness
"of said Kingdom of Spain, belonging to the public
"debt of said Island of Cuba, and being a part of the
"public funds of the Kingdom of Spain; and on said
"date, viz.: the 28th day of December, 1889, and
"within the jurisdiction of Spain, at said city of Ha-
"vana, Island of Cuba, he, said Luis Oteiza y Cortez,
"did wrongfully and feloniously embezzle bonds or cer-
"tificates of indebtedness belonging to the said public
"debt of the Island of Cuba of the value of one hun-
29 "dred and ninety thousand dollars, and converted the
"same to his own use, and also the coupons of other
"government bonds of the value of five hundred
"thousand dollars, and the stub books thereof also."
And upon the next page: "And complainant further
"says, on information and belief, that the criminal
"proceedings have been begun in the city of Havana,
"Island of Cuba, against the said Luis Oteiza y Cortez
"for said embezzlement." I make this application upon the ground that these statements are not substantiated by any of the telegrams annexed to the affidavit or complaint.

The Commissioner.—(After examining the complaint).
30 Motion denied.

Mr. Anthony.—If the Honorable Commissioner will hear me for a moment.

The Commissioner.—Certainly. I did not think you wished to be heard further. *Mr. Anthony.*—I think that these telegrams, in so far as presented, are the only information directly upon which the Commissioner could issue his preliminary warrant. I understand it stands in the place of information filed with the Dis-

trict Attorney. The first telegram appearing in the ex- 31
hibits states that it is necessary that "Your Excellency," referring to the Spanish Counsel in this city, "arrest "thief Oteiza, secretary Bureau of Public Debt, who possibly will go from Key West," &c. The only information, in so far as it is contained in any affidavit, is contained, I believe, in the second telegram in the exhibits, date January 1, 1890: "The value of stolen "bonds of Public Debt of Island of Cuba is one hundred "and ninety thousand dollars. The date of robbery is "28th December, last past." And the last telegram, in which the proceedings or the destination of Senor Oteiza are stated, states that it is necessary to detain him at Key West, Tampa or New York; that the bonds 32
should be taken from him pending the proceedings to to be sent. Now, as I understand the complaint or information filed here, there is no allegation in the telegrams, or in any other information which is stated in the moving paper, that Senor Oteiza, as the custodian or the Secretary of the Public Debt of Cuba, was the custodian of any money of funds of that Province of Spain. It seems to me that the affidavit is entirely lacking—that the information upon which the affidavit is based is entirely lacking—upon that question: and if that be so, then that part of the affidavit is certainly immaterial upon this hearing. The question as to whether or not a man is a thief, as con- 33
tained in the telegram as translated by counsel for the prosecution, is, perhaps, a question of interpretation; but, at the same time, there is nothing in that word in itself, or in the Spanish equivalent of it, which would warrant an extradition under any circumstances. It is a mere general designation, as I take it; and under those circumstances it seems that that portion of the affidavit, at least, should be stricken out, as not being warranted or substantiated by the telegrams which are annexed to the moving papers.

34 *The Commissioner.*—Counsellor, would you not say that if an official, designated as an official of a Bureau of Public Debt, were charged in a foreign country with stealing the bonds belonging to that Bureau of Public debt, that came pretty near the definition of embezzlement? *Mr. Anthony.*—I should take issue with your Honor later.

The Commissioner.—In view of your reply to that I think we will dispose of that question at present by denying the motion. Exception taken. *Mr. Prevost*—I would like to say a word to your Honor in regard to this matter. I think your Honor is probably correct in stating that telegrams must in their very nature be condensed, and that information which they bring to the
35 representative of a foreign government must be exceedingly abbreviated. I think, however, your Honor will agree with me that where that information comes, the complaint that is presented against the prisoner that is sought to be extradited should, as far as possible, charge him with the same crime that is designated by those despatches. Whatever stealing may mean, it does not necessarily mean embezzlement. If we examine these telegrams, we find certain things which may reasonably be interpreted—we find certain things upon which he is called a thief. That is all the information, so far as the complaint goes, that those telegrams show that he is a thief. That certainly he is not extraditable.
36 The second telegram has absolutely no information. The third telegram states that one hundred and ninety thousand dollars of bonds of the public debt have been stolen. There is another steal. It does not say by whom; and if in connection with the preceding telegrams, we are to interpret it as having reference to this particular prisoner, even if we stretch it to that extent, it does not constitute the crime of embezzlement. On the contrary, we may interpret these very words

used in the first telegram, which refer to this man, 37
that he has committed a theft of $190,000 of securities, and when we go to the next telegram we find he has fled. There is no denying that, that is to say, there is no denying that he left that country. That he fled is a question which we will later on be prepared to combat. At any rate, that telegram is sufficient to substantiate an allegation in the complaint that he fled. Finally it says in the last telegram that Oteiza took coupons belonging to other bonds of the value of $500,000, and the stub books. It does not say that those were in his charge; it does not say what they were; it does not say to whom they belonged; and, in fact, there is not a single word 38
in all those telegrams which can reasonably be interpreted as charging this gentleman with embezzlement. The whole thing, from beginning to end, if we are to give it any reasonable construction whatever, is a theft of $190,000 of coupons and $500,000, and stub books, or whatever they are. It is a theft, it is no embezzlement. The representative of a foreign power has no right to come into a Court of justice and to charge a man with embezzlement, when the information which he presents as the foundation of that charge has absolutely nothing to substantiate it. He is here charged by the representative of the Spanish Governmeht with having committed embezzlement, and the representative of the Government presents, in substantiation of that charge, 39
a number of telegrams which charge him with theft of a certain number of bonds. I submit that, when we make a motion here to strike out certain portions of this complaint which are not substantiated by those telegrams, and which the Consul has no right to make, your Honor should give us careful consideration.

Mr. Judge.—If your Honor will permit us, I think that Article XII of the Supplementary Treaty disposes

of the question before you now. That says that when a person accused shall have been arrested, and so on, and a mandate or preliminary warrant of arrest has been issued in pursuance of a request or declaration received by telegram from the Government asking for the extradition, it shall be competent for the judge or magistrate, at his discretion, to hold the accused for a period of twenty-five days, so that the demanding Government may have an opportunity to lay before the magistrate legal evidence of the guilt of the accused. Under that, if we had simply produced telegrams annexed to this complaint, stating that Mr. Oteyza was accused of having committed a theft from the Government, and on that based the complaint, it would stand for twenty-five days. But we have gone much further than that, and have put in all the telegrams we have received up to that date. If there is a doubt in your Honor's mind, we would ask leave to add to those telegrams the telegrams subsequently received, which go more fully into the matter; but we do not think, on our part, that it is necessary in this preliminary proceeding (it is preliminary as yet) to make a full statement, such as is required in an indictment, or in a requisition from the State of Ohio, for instance, or something like that. Under the provisions of Article XII of the Supplementary Treaty, which distinctly gives us the right, in connection with the Article in the first Treaty itself, Article XI of the first Treaty, where extradition is sought from a colonial possession (which is Cuba) of one of the asking parties, requisition may be made by the superior Consular officer, and Mr. Suarez Guanes is the superior Consular officer for this District. He has made the request. He has produced telegrams. And his complaint must stand at this stage of the proceedings, to fall or to be sustained by subsequent proof to be produced from the Island of Cuba, which is all on the way, and which I

may say is proof conclusive of the guilt of this man, as 43
we will be able to set forth ; and when we get it we shall make a motion to amend the complaint, or to make it more definite and charge him with other crimes than those alleged. I think your Honor should deny the motion, and hold to the decision you have already made.

The Commisioner.—You state here that criminal proceedings have been begun in the city of Havana in the Island of Cuba, against said Luis Oteiza y Cortes for said embezzlement. *Mr. Judge.*—That is sustained by the second last telegram. It says: "Awaiting proceeding to be sent." *Mr. Solomon.*—But it does not say that they have actually been taken out. *Mr. Anthony.* 44
—You cannot keep this gentleman for twenty-five years. *Mr. Judge.*—We will keep him for twenty-five days, if necessary.

The Commissioner.—Where were the proceedings taken? *Mr. Judge.*—The proceedings were taken against him in the Island of Cuba for embezzlement.

The Commissioner.—Where does it say so? *Mr. Judge.*—It does not say in those terms, but we shall request to prove that. This is from the Captain General of Cuba, the highest official in the Island, and it is the Consul who knows the meaning of these things, the meaning of these short telegrams, and it means this, and we can offer proof, even at this preliminary stage, that in Cuba it is necessary to copy all these documents, 45
and that to copy them will take some time, and to file them.

The Commissioner.—If I understand that you have other proof in the way of telegrams, &c., you had better call your witness. *Mr. Prevost.*—I think we should press this motion as it stands now. I think we are entitled to have those matters stricken out. If they subsequently present any proof which enables them to

46 put those matters in again, let them do it. But I think, as the matter stands now, we are entitled to have those portions of the complaint stricken out.

The Commissioner.—I will deny your motion for the present. Exception taken. *Mr. Judge.*—We will ask an adjournment for the purpose, not only of going on with the case in the main, but for the purpose of producing the Consul to add telegrams since received to the complaint already made. *Mr. Anthony.*—That motion we respectfully protest against being granted.

The Commissioner.—I am not going to discharge this man when they tell me that they have further proofs and telegrams that they can produce within a short time. *Mr. Anthony.*—I did not understand that the
47 other side was ready to go on to-day.

The Commissioner.—Your motion is purely technical; and I am not going to discharge the prisoner on a purely technical motion.. *Mr. Anthony.*—The only object I have in pressing my motion is, that they may have to proceed to-day. That is the only object of my motion.

The Commissioner.—They may open their case. I shall require them to go into what proof they have.

MIGUEL SUAREZ GUANES, called on behalf of demand-
48 ing Government, being duly sworn, testifies as follows:

Direct examination by Mr. Judge:

Mr. Judge.—Will you permit it to be marked on the record that we produce the Consul now for the purpose of offering additional telegrams, and not on the main case? *Mr. Anthony.*—What is the meaning of this? Are you asking for an additional preliminary warrant? If you are proceeding on the information already filed,

then it seems to me that you should proceed with that 49
before you take additional testimony. *Mr. Judge.*—
The Commissioner has given me leave to offer additional
telegrams. *Mr. Solomon.*—I beg pardon, any addi
tional evidence you have.

The Commissioner.—They may offer anything they
want to. Whether it will be received or not is a differ-
ent thing.

Q. You are the Consul General of Spain in the city of
New York? A. I am.

Q. You have read the telegrams annexed to your
complaint? A. Yes.

Q. Are those copies of the telegrams received from
Cuba? A. Correct.

Q. Have you received other telegrams since then? 50
A. Yes. *Mr. Anthony.*—Objected to as immaterial,
irrelevant and not the subject matter of this inquiry.
Objection overruled. Exception taken.

Q. Are those telegrams written in plain English or in
cipher? A. Some in cipher; and one to-day in Spanish,
not in cipher. *Mr. Judge.*—I suppose I will be met
with an objection. I have not got the original telegram
in my hand, and I do not think the Consul has it with
him. *Mr. Anthony.*—Undoubtedly we will object.
Mr. Judge.—Then we ask for an adjournment. *Mr.
Solomon.*—Then we ask, before we have the next sit-
ting, that you will furnish us with a copy of the tele-
grams. *Mr. Judge.*—Yes. Perhaps you would want 51
to hear this telegram now? *Mr. Solomon.*—We with-
draw our request. *Mr. Prevost.*—No one has a right to
charge a stranger with a crime that he has no absolute
information about. This gentleman has been unlaw-
fully, I respectfully submit, detained in prison since his
arrest. There is no foundation for it in the complaint.

The Commissioner.—You do not deny that a number
of the telegrams sustain the 16th charge—larceny, de-

52 fined to be theft of personal property of the value of $25 or more. *Mr. Prevost.*—Yes, I do. What section is that?

The Commissioner.—The sixteenth. It is covered by several. I am reading Article II, Subdivision 16. The word "theft" is in there. *Mr. Prevost.*—He is not charged in the complaint with theft. He is charged with embezzlement.

The Commissioner.—Your position is a very different one from what it would be if you were making a motion that went to the very guilt or innocence of any offence committed by this prisoner. It is purely technical. *Mr. Prevost.*—We suppose they knew what they were
53 about, and that they were able to frame their complaint in a manner to meet their case.

The Commissioner. –If it should turn out that those proceedings were brought for embezzlement, and notwithstanding that, the Consul should demand his extradition for another offense covered by the evidence, I do not understand that the extradition treaty would forbid his right to have that extradition. *Mr. Prevost.*—That would not forbid their right, if they properly worded the complaint, or presented another one; but certainly by that issue they would not have the right to any extradition. Your Honor is presented with a complaint. If there is any evidence of his having committed murder, larceny or any other crime which may
54 or may not be included in the list of crimes for which a person may be extradited between this country and Spain, your Honor has not anything to do with those things if not charged in the complaint. The issue that is presented to your Honor is simply this, has this man committed embezzlement? Now, I say that before they can even make their charge, and before your Honor as Commissioner can entertain such a charge, and before your Honor can issue a warrant for the arrest of a pris-

oner upon that charge, it is incumbent upon them to 55
show that they have some foundation upon which to go. Embezzlement is the charge which they have made. Embezzlement is not a crime which is substantiated by the telegrams that they have presented. And I submit to your Honor that you have no right to hold this prisoner here for one hour, unless the complaint be changed, or unless he is committed in some legal manner. When they themselves have come forward with a charge of embezzlement, and when they now say that at some future time they may be able to present telegrams which will substantiate that charge, you have no right to adjourn the proceeding to enable them to present them, because there is not a scintilla of evidence upon which this com- 56
plaint is founded, and the prisoner is entitled to a discharge without one hour's postponment. Motion denied. Exception taken.

Mr. Prevost.—You deny the motion to strike this portion out? *The Commissioner.*—Yes.

Mr. Prevost.—Does your Honor deny that absolutely and peremptorily? *The Commissioner.*—Yes. *Mr. Prevost.*—We take exception to that.

Mr. Judge.—We would like an adjournment for about fifteen days. *Mr. Anthony.*—It seems to me, concerning that motion, that the Commissioner should use a very large discretion in confining the defendant in this case for that period of time. There is certainly no basis presented for so long a time. *Mr. Judge.*—We 57
will set it down, and move it on when we can. *Mr. Solomon.*—We object to any adjournment whatever. *Mr. Gonzales.*—We have a right to twenty-five days. *Mr. Prevost.*—We will adjourn for an hour, and get those telegrams—they can get them in an hour. If they have any reason to hold this gentleman, we will give them a reasonable time to produce them. We will wait an hour. *Mr. Anthony.*—We will stay all night, if necessary.

58 Q. Have you the original telegrams in your control which you have received from Cuba? A. Yes. *The Commissioner.*—You mean telegrams received since the making of the complaint? *Witness.*—Yes.

The Commissioner.—The Consul on the stand states that the supplemental telegrams charged the embezzlement.

Q. Are they present here in this room? A. No.

Q. Where are they? A. In my office.

Q. In your office? A. The original telegrams are in my office.

Q. Are you expecting according to telegrams received by you from Cuba from the Captain General.

Mr. Anthony.—To that we object.—What the Consul
59 may be expecting has nothing to do with the question. It is a question as to whether the Commissioner has reasonable ground for believing that the testimony is substantiation of the telegrams is sufficient to hold the prisoner. *Mr. Judge.*—I have copies in my hand. If they want to see them they can see them; and I will offer the copies now, and give the originals at any time. This is only see-sawing; it does not amount to anything. I will ask an adjournment till to-morrow to produce these telegrams.

The Commissioner.—Will you receive the copies which are produced? *Mr. Prevost.*—No; we offer to adjourn for an hour now to allow them to produce those
60 telegrams, and we oppose any further adjournment. *Mr. Judge.*—I suppose we can get them inside of an hour, if your Honor will sit here and wait for us.

The Commissioner.—I will adjourn this matter until to-morrow. *Mr. Prevost.*—If this were a matter of presenting evidence, I would think your Honor exercised proper discretion in this matter, but here is a case—and it is exactly the same case I had in the Benson matter—that I presented under a complaint, and your Honor

was inclined to discharge the man until there was some complaint founded upon something. We say there is no complaint before your Honor, and your Honor cannot adjourn. They have, as the record shows, admitted that they can have these telegrams here in an hour. We will wait for an hour. I object to any further adjournment. Your Honor has no right to keep this man in jail one night when there is not any complaint. 61

The Commissioner.—I will grant their motion for an adjournment of 24 hours. *Mr. Solomon.*—May I ask the Court to direct the Marshal to return to the prisoner the things that he has in his posession belonging to him, except such papers as he actually requires.

The Commissioner.—Whatever papers the Marshal has taken from this prisoner other than papers relating to the offence that is charged, such papers as, for instance, may in his judgment be in the nature of evidence, and other than property involved in the charge that is made, of course he understands he has no right to withhold from the possession of the prisoner. The Marshal fully understands his duty in the premises. Beyond this, gentlemen, I do not think I can give him any direction. Hearing adjourned to Tuesday, Jan. 7, 1890, at 10:30 A. M. 62

NEW YORK, January 7, 1890, 10:30 o'clock, A. M. 63

Present—The COMMISSIONER, Mr. GONZALES, for the demanding Government. Messrs. SOLOMON, ANTHONY and PREVOST, for the prisoner. The prisoner is produced by the U. S. Deputy Marshal.

MIGUEL SUAREZ GUANES' *direct examination continued by Counsel for Spain:*

Q. Mr. Suarez, have you brought with you the telegrams about which you spoke yesterday? A. I did.

64 Q. (Three papers shown witness.) I show you these three. Are those the telegrams received since you made the complaint? A. These telegrams I received since I made the complaint.

Counsel for Spain—If your Honor please, I offer these telegrams. The first one is in cipher; the two next are in Spanish, not in cipher. I would like to have them marked. *Mr. Prevost.*—Objected to upon the ground that they have been received subsequent to the date of the making of the complaint, and, while they might form a basis of a new charge, are in no way sufficient to re-validate and to give effect to the complaint already presented.

Counsel for Spain.—They are not offered for that pur-
65 pose. *Mr. Prevost.*—The complaint presented has been made upon information and belief, and the grounds of that information and belief are therein set forth. Upon those grounds, we submit that the complaint is insufficient, and that the prisoner is entitled to his discharge. Motion denied, and telegrams admitted. Exception taken. Said papers are marked Complainant's Exhibits 1, 2 and 3, January 7, 1890.

Q. Have you had a translation made of the telegram that is in cipher? A. Yes.

Q. Is the translation on the back of Exhibit No. 1—of the cipher? A. Yes. Said translation offered in evidence. *Mr. Solomon.*—You mean a translation in
66 Spanish? There is no translation in English. *Counsel for Spain.*—There is a translation of the cipher; that, of course, is in Spanish. Said translation marked complainant's Exhibit 4, January 7, 1890.

Counsel for Spain.—If your Honor please, we desire to offer the translations into English of two of these telegrams, and put them on the record, as that is the only English of these telegrams that has yet come up. *The Commissioner.*—Admitted.

Caunsel for Spain.—This is the translation into English of Exhibit No. 1, of which Exhibit No. 4 is the Spanish. (Counsel read same.) 67

Said paper marked Complainant's Exhibit 5, January 7, 1890.

Counsel for Spain.—These telegrams are offered to show your Honor our diligence and good faith. Translation of Exhibit 2 is offered in evidence, and marked Complainant's Exhibit 6, January 7, 1890. Translation of Exhibit 3 is offered in evidence, and marked Complainant's Exhibit 7, January 7, 1890.

Counsel for Spain.—Now, I understand that there is no objection to the English translation, so I need not not ask the Consul about it. That is all we have to offer to-day. 68

Cross-examination by Mr. Prevost:

Q. Mr. Suarez, you have stated that you have made a translation into Spanish of the telegram marked Exhibit 1, which you have received in cipher? A. Yes.

Q. Will you please explain exactly the meaning of those ciphers, and the manner of the translation? A. I explain that, that it is necessary to have the book.

Q. Have you not that book with you? A. No, I have not the book.

Q. Can you now now make a translation of the cipher telegram into Spanish? A. Yes.

Q. At this moment? A. No, not without having the book. 69

Q. You cannot do it without the book? A. No, not without having the book.

Q. Therefore, without the book, it is impossible for you to say whether or not the translation you have presented is a correct translation? A. I beg your pardon. That translation had been made before we came here, according to the translation made in my office.

70 Q. But you cannot now say, excepting by reference to that book, whether or not the translation which you you have presented is a correct one? A. Yes, it is correct.

Q. Can you now say it without that book? A. I cannot do it by memory.

Q. You do not remember what that cipher means, do you? A. I do not remember very well. What do you mean by "memory"?

Q. Do you now remember what each one of those numbers means which is contained in the cipher telegram? A. Of course.

Q. What is the meaning of the first one? A. Do you
71 think I can do it by memory? It is impossible for me.

Mr. Prevost.—Then I move that the translation which has been presented to that cipher telegram be stricken out unless the cipher code be here presented. Motion denied; exception taken.

Counsel for Spain.—We wish an adjournment, for the purpose of receiving the evidence which is on the way of the guilt of the accused, according to the provisions of the treaty. *The Commissioner.*—How much time do you want? *Mr. Gonzales.*—We want two weeks, if your Honor please. *Mr. Prevost.*—Before making any objection to that motion, I want to make a motion on behalf of the prisoner. I want to renew my motion to strike out the portions of the complaint that were
72 the subject of a motion yesterday.

A complaint has been presented here, charging this gentleman with embezzlement, upon a certain date, of a certain specific number of bonds, that is to say, with the embezzlement of certain specific property. Not a word is said in the complaint with reference to the embezzlement of money—not a word is said in the complaint with respect to larceny, with respect to theft. Now, we have here in the telegram Exhibit 6, this in-

formation: "In said proceedings, which are perfectly 73
"adjusted to treaty, will be found with all clearness
"proofs of crime, and evidence that great part of the
"money stolen was forwarded by draft by Oteiza to
"Madrid." In other words, here is reiterated in this telegram, which is of the latest date, exactly what we had in the others—that what this man has done, if he has done anything, is to steal money. This complaint charges him with embezzlement of bonds and coupons. This telegram states that the money stolen was forwarded, and so on.

Now, I respectfully submit to your Honor that when the Spanish Consul comes forward with a telegram of that kind, which is a distinct declaration to your Honor that what has been committed there, has been theft of 74
money, and then proposes to hold this gentleman upon a charge of embezzlement of so many funds, so many bonds, so many coupons, the two things seem to be so contradictory that either a new complaint must be filed or this prisoner must be discharged. The two things are contradictory one of the other. He would be in a better position if he came forward here to-day without any telegrams whatever. His position would be better. Why? Because he would have nothing to contradict him. While, on the other hand, he presents himself here with these telegrams, which distinctly state that the charge is different from the charge upon which this man has been arrested, and for which they are seeking 75
to extradite him. And, therefore, I submit to your Honor that we are entitled to have this motion granted, and to have that portion of the complaint stricken out.

The Commissioner.—In the telegram dated the 6th of January: "Oteiza has been charged with having em-
"bezzled and committed malversation of public funds
"under his charge as secretary of the debt of Cuba.
"Criminal proceedings have been commenced against

76 "him, and a warrant of arrest has been issued by our "authority." Do you mean to say that there is nothing there for the Consul-General to make application upon? *Mr. Prevost.*—Undoubtedly there would be if it was the only one received; but we are to construe these things all together. We have these two telegrams. One of them states in distinct terms that this man is charged with embezzlement of public funds. Now, that is the specification in legal terms of the charge which is made. On the other hand, we have a telegram, of even date therewith, which, while not stating the thing in legal phraseology, gives, so far as the facts have been given, the facts of the case. In other words, we have here two telegrams: One makes the charge, the other gives the
77 facts. Now, it is competent for your Honor to state whether those facts are consistent with that charge. The facts are that he has stolen money, as alleged in this telegram; but, in the very face of those facts, which are set forth here under the authority of the Governor-General of Cuba, and under his signature—in the very face of those facts, the Consul presents himself and says this man is charged with embezzlement. It seems to me that those two things must be taken and construed together. Motion denied. Exception taken.

Counsel for Spain state that they want two weeks adjournment. *Mr. Provost.*—I certainly object to that. I am sorry to object to everything that the gentlemen
78 for the other side propose; but we have here a telegram, dated the 6th, stating that the documents are on the way. *Counsel for Spain.*—All in Spanish. *Mr. Gonzales.*—We shall have to translate them into English. They are very voluminous, and very bulky, and very technical. The Commissioner adjourns the hearing to Tuesday, January 14, 1890, at 10:30 o'clock A.M.

New York, January 14, 1890. 10:30 o'clock A. M. 79

Present—The COMMISSIONER. Messrs. GONZALES and JUDGE, for demanding Government. Messrs. SOLOMON, PREVOST and ANTHONY, for the prisoner. The prisoner is produced by the U. S. Deputy Marshal.

Counsel for Spain. — If your Honor please, we would like to know if you would allow the record to be corrected of the first day? *The Commissioner.*— What is the correction? *Counsel for Spain.*—On that day, as your Honor remembers, the defendant said that he was not only Luis Oteiza y Cortes, but also the Secretary of the Public Debt of Cuba, thus completely identifying himself; and that latter part does not appear on the record. I don't know whether the gentle- 80
men on the other side will deny that he is the Secretary of the Public Debt—or the ex-Secretary of the Public Debt—of Cuba. I suppose that your Honor remembers that he said without the slightest hesitation that he was both. *Mr. Prevost.*—We oppose it certainly. We have here a sworn stenographer whose duty it is to make a correct record. I think that, if this mistake has occurred, it certainly should have been rectified immediately at the next sitting. The prisoner appeared here on the first day without counsel, and certainly it is not proper to make any correction of that record which we, as his counsel, can know nothing about. I am perfectly willing to admit now, and to have it ad- 81
mitted upon the record, that this gentleman is Luis Oteiza y Cortez, but any admission beyond that I certainly refuse to make. *The Commissioner.*—I have no recollection on the point myself; but, if there is any doubt about it, you will have time to prove it if it is a fact. *Counsel for Spain.*—Very well. We have received from Cuba the proceedings in the case, and the warrant of arrest. (Producing papers.) There are the proceedings; there are two hundred and thirty odd

82 pages of Spanish; and it is not only voluminous, as you see, but it is written in very technical language; and it will take some time to translate it properly for your Honor to understand it. We have translated last night the warrant of arrest which comes with it; that translation is ready, because it is short. We desire to present both of those and to ask time for their translation. We present this under Article XI of the treaty—of the first treaty—in which it is stated that if the fugitive is merely charged with crime, a duly authenticated copy of the warrant of arrest in the country where the crime is committed, and the depositions upon which such warrant may have been issued, shall be prodnced, with such further evidence as may be necessary. 83 We will present the other evidence afterwards. *Mr. Prevost.*—I suppose, sir, undoubtedly, that time will have to be allowed for the translation of these documents. They are voluminous, and it is reasonable that counsel for the other side should have enough time in which to do it. I think, however, it should be done as quickly as possible. Do I understand that these have been offered in evidence, or simply an adjournment is requested? *Counsel for Spain.*—They are offered in evidence, and then time is asked for translation. There is a translation of the order of arrest, which is now offered in evidence. *Mr. Prevost.*—Then I request 84 your Honor that, before this adjournment shall be granted, and undoubtedly it should be, and I do not oppose it, the record stand in this way: that any objections we have to make to them will be made at the time that the documents are presented with their translations. How long an adjournment will be granted? *The Commissioner.*—If you have any objections to make to the papers which are here produced, they must be made now. *Mr. Prevost.*—Then I shall proceed to

do so under protest. We object to the admission of 85
these documents in evidence, for the reason that the certificate of the United States Consul General annexed thereto is not in accordance with the Act of August 3, 1882. The fifth section of that Act requires that they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped; and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that any deposition, warrant or other paper, or copies thereof, so offered, are authenticated in the manner required by this Act.

The certificates presented are not in the form that is 86
required by the section read. The Consul fails to state that they are properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party is said to have escaped.

The Commissioner.—I sustain the objection. You may mark them for identification, and also the papers of which you have a translation. How much time do you want to have these papers sent back, and have them identified, and have them translated. *Mr. Gonzalez.*—We want fifteen days, at least, to have them properly translated. There are 240 pages, and 87
they are very technical. We shall go on with the translation in the meantime, and shall present these papers with the supplemental certificate from the Consul—another set similar to this. If we send these papers back, we shall want at least two weeks. We will notify the other side as soon as we receive the papers, and notify your Honor immediately. We do not want to delay. *Mr. Prevost.*—I oppose it, and move for the discharge of the prisoner. (Counsel

88 proceeds to argue the objection and motion, and reads from the 5th Article of the Treaty, and from page 12 of the Supplemental Treaty). They are not actually going into the evidence; there has been no examination here; they have requested time to present this evidence. Your Honor, in considering the facts and exercising your discretion, has given them until to-day. They present themselves here with faulty documents and faulty certificates, and they ask for two weeks more; and I submit to your Honor it is an outrage to keep this man in prison any longer.

Counsel for Spain.—If your Honor please, reading the Treaty, we say that if it had stopped at the sentence
89 which reads "at his discretion to hold the accused for "a period not exceeding twenty-five days," then it might be said that, if we came here at this day and did not produce the evidence, your Honor's discretion should be immediately exercised, perhaps, one way or the other. But it goes on further than that, and cuts off discretion to some extent, by stating that the object of this is that the demanding government may have an opportunity to lay before such Judge legal evidence of the guilt of the accused. And it goes further than that, and further limits the discretion, by saying that if at the expiration of such twenty-five days that shall not be done, the accused must be discharged. Now, we must have an opportunity to lay this evidence before your
90 Honor; and it has come to be the practice in these cases that where good faith is shown, and an evident effort to get evidence, the limit of twenty-five days is always given to the demanding government. They are given that time. *The Commissioner.*—You are asking for an adjournment beyond the twenty-five days prescribed in the statute. *Counsel for Spain.*—We will withdraw that request, and we will ask for ten days. Ten days will make it to the 24th; and we have

to the 27th to complete the twenty-five days. *The Commissioner.*—Have you any testimony other than that you have produced to-day? *Counsel for Spain.*—If they do not object to the order of proof, we will go on with the papers that have been taken from the person of the prisoner, and put the Marshal on the stand to swear where and when he got those papers. *Mr. Prevost.*—In order that this record may stand right, I have moved for the discharge of the prisoner. Motion denied. Exception taken. 91

FREDERICK BERNHARD, called on behalf of demanding government, being duly sworn, testified as follows: 92

Direct-examination by Counsel for Spain.—

Q. You are a Deputy Marshal of the United States? A. I am.

Q. Did you make the arrest of the accused in this case? A. I did.

Q. Under a warrant delivered to you by whom? A. Under a warrant issued by Commissioner Lyman.

Q. When did you make the arrest? *Mr. Prevost.*—January 2d. A. January 2d.

Q. Where? A. Hotel Brunswick, in this city.

Q. Did you speak with the person whom you arrested? A. As much as I could in English; he did not understand much English. 93

Q. Did you ask him his name? A. I did—I showed it to him on the warrant.

Q. Showed him the name of Luis Oteiza y Cortes on the warrant? A.—y Cortes—yes, on the warrant.

Q. Did you ask him if he was that person? A. Yes—he admitted it.

94 Q. What did he say? A. He said yes—he admitted it.

Q. What did you then do? A. As soon as he was arrested, I explained to him, "You are under arrest now"—and searched him.

Q. You searched him? A. Yes.

Q. Did you take from his person any articles? A. I did.

Q. You took two pocket-books, did you not? A. I did.

Q. Do you remember the fact of my making an inventory of the things in those pocket books in your presence so as to hand them back to you? A. Certainly, yes.

Q. Have you those things here? A. Yes.

95 Q. Will you please produce the pocket book colored black? (A black pocket book is produced from a bundle by the Marshal.)

Q. You found this object on the prisoner's person? A. Yes. *Counsel for Spain.*—I offer in evidence out of that pocket book a passage ticket from New York to Havre, and a ticket from Havre to Paris, and that is all. *Mr. Prevost.*—I object to that. The question is not whether he was going to Havre, or whether he was going to Paris. The question is whether he fled from Cuba. Counsel for Spain state that they will connect the testimony. Objection overruled. Exception taken. Said tickets are marked respectively Complainant's Ex-

96 hibits 8 and 9. January 14, 1890.

Q. Please produce the red pocket book. (Witness produces a red pocket book.)

Q. You found the red pocket book on his person also? A. I did.

Counsel for Spain.—I offer in evidence two papers from said red pocket book, one a ticket from Tampa, and the other a cipher, or code, or collection of numbers representing bonds, we don't know which. *Mr.*

Anthony.—What is it offered for? *Counsel for Spain.* 97
—It is offered in evidence for what it is worth. We expect to be able to connect the memorandum with the evidence in the case. *Mr. Prevost.*—I am very anxious that that telegram should go in evidence, and make no objection to the telegram at all—it is intended to be a telegram; but I object to the ticket on the same grounds. That telegram will show whether he was flying from justice possibly a little later. Objection overruled. Exception taken. Said papers are marked respectively Complainant's Exhibits 10 and 11, January 14, 1890.

Q. You found some other papers at the time you arrested the accused, did you not? A. I did. 98

Q. Have you those papers? A. They are here. (Witness produces a bundle of papers.) *Counsel for Spain.*—We offered in evidence three receipts, signed by "A. Andrade," given to some person in blank.

Q. (Said paper shown witness.) I ask you if you found those in the control or on the person of the prisoner? A. I did.

Mr. Prevost.—We object to them on various grounds. In the first place, these are not receipts given to the prisoner; there is nothing on their face to show it; "Received of blank so much." In the second place, there is nothing to show that the coupons which are mentioned here have any connection at all with the coupons with the embezzlement of which he is charged. 99
Counsel for Spain.—We will show it afterwards. It is in the depositions—the very series. *Mr. Prevost.*—I make those objections, and, further, that there is nothing to show who the person is who signs the receipts. He may be a duly commissioned official of the Government; we don't know anything about it; and there is nothing to show the slightest criminality in those papers. Objection overruled. Exception taken. Said papers

100 are marked respectively Complainant's Exhibits 12, 13, and 14, January 14, 1890.

Counsel for Spain.—I offer in evidence a written paper of two pages, headed "Series F," full of figures, which we claim are the bonds in question. They are mentioned in the depositions—"Series F." *Mr. Provost.*—If your Honor please, can I have on the record: "Which we claim are the bonds in question?" (Request granted.) *Mr. Prevost.*—I object to these on the ground that there is nothing to show that there is any connection between that and the bonds or coupons which were stolen. Objection overruled; exception taken. Said paper is marked Complainant's Exhibit 15, January 14, 1890.

101 Q. (Said Exhibit 15 shown witness.) That paper was also found on the prisoner? A. Yes.

Counsel for Spain.—Now I offer this paper in evidence. (Producing paper.) *Mr. Prevost.*—Objected to. It has nothing whatever to do with the bonds in question. Objection overruled; exception taken. Said paper is marked Complainant's Exhibit 16, January 14, 1890.

Q. (Said Exhibit 16 shown witness.) This also was found on the person of the prisoner? A. Yes. *Counsel for Spain.*—I offer the ink side of this paper. (Producing paper.) *Mr. Prevost.*—Why don't you offer the other side of this paper? *Counsel for Spain.*—It does

102 not seem to relate to the case. *Mr. Prevost.*—I object, in the first place, to the admission of it anyhow; and, in the second place, to the admission of one side exclusive of the other.

The Commissioner.—As it is in Spanish, I cannot undertake to distinguish. *Mr. Prevost.*—I think I ought to have a statement from the other side of what they expect to prove from this paper.

Counsel for Spain.—We expect to be able to connect

all these papers with the depositions in the case. *Mr. Prevost.*—That is too general a statement. *Counsel for Spain.*—That is all you can get out of us at this stage of the proceedings. *The Commissioner.*—On the statement made by counsel that he will connect this with testimony that he expects to produce from Cuba, I shall overrule the objection. *Mr. Prevost.*—Do you also overrule my objection to the fact that one side is being offered in evidence and not the other? *Counsel for Spain.*—I will put the other side in. Let it all go in. *Mr. Prevost.*—Then I make the objection to the whole, because there is no connection between it. Objection overruled; exception taken. Said paper is marked Complainant's Exhibit 17, January 14, 1890. 103

Counsel for Spain.—Now we offer in evidence this paper. That is Mr. Cortes' receipt for the bonds in question, including all other bonds, when he took his office, with an inventory of the bonds attached to it—official document. *Mr. Prevost*—We make no objection to that. Said paper is marked Complainant's Exhibit 18, January 14, 1890. 104

Q. (Said Exhibit 18 shown witness.) You found this on the person of the prisoner? A. Yes. *Counsel for Spain*—Those are all the papers that we wish to offer to day. *Mr. Prevost*—There are others, are there not? *Counsel for Spain*—There are others, which you can have. *Mr. Prevost*—I will examine them later.

Q. All these papers which have been shown you, and have been produced by you, were found by you with the accused at the time of his arrest? A. Yes—Well, excuse me, a part of it was found afterwards. 105

Q. Just let me remind you what you did. *Mr. Prevost*—Do not remind him. Examine him.

Q. When you arrested the defendant you went up to his room, didn't you? A. Yes.

Q. With whom? Mr. Mehan? A. Yes—No—I went

106 with this gentleman over there (Indicating a man in Court).

Q. Mr. Ball? A. Mr. Ball.

Q. And with the defendant? A. I went with the defendant, yes, and Mr. Ball stepped out of the floor below, and then I went up with the prisoner, and Mr. Ball came in the other side, and we went in together.

Q. You went with the defendant and Mr. Ball to the defendant's room? A. Yes.

Q. And then what did you do? Opened his trunk? A. Yes.

Q. With his consent? A. With his consent. I did ask him there.

107 Q. And you found this bundle of papers in his trunk, did you, then? A. Yes.

Q. And from that bundle have you taken the papers that have been shown you to-day? Is that the fact? A. Yes, that is it.

Q. At the time that the defendant was present? A. Yes.

Cross-examination by Mr. Prevost:

Q. Mr. Bernhard, you say you arrested this gentleman at the Hotel Brunswick? A. Yes.

Q. What day? A. On the 2d of January.

Q. At what time? A. In the evening after seven o'clock.

108 Q. What day of the week was the 2d of January? A. The day of the week?

Q. Yes. A. I think it was Saturday night.

Q. Saturday night? A. I think so; I am not quite sure of it. If I look at my memorandum book, I will tell you.

Q. I think your recollection will do well enough. A. I am not quite sure.

Q. When did you receive the warrant for his arrest? A. On the same day.

Q. At what time? A. By four o'clock. 109

Q. In the afternoon? A. Yes.

Q. From whom? A. From Commissioner Lyman.

Q. What information was given you at the time you received the warrant as to the prisoner? A. That a man was stopping under the name at the Brunswick Hotel—Hotel Brunswick.

Q. Is that all the information you got? A. Well, a kind of description.

Q, Anything else? A. That is all.

Q. And did you immediately go to the Hotel Brunswick? A. If I did what?

Q. Did you go at once to the Hotel Brunswick? A. I went down Broadway a short ways first, and then up 110 town.

Q. Why, didn't you go up at once to arrest him? A. Well, because I had another little business.

Q. Didn't you know this was an extradition case? A. Yes.

Q. That the prisoner was alleged to be a fugitive from justice? A. That is what the warrant stated, yes.

Q. And that it was necessary to arrest him before he should get off to any place? A. I take generally my own discretion about those matters.

Q. Don't you think that, when a man is ordered to arrest a fugitive, and told he was at such a place, and is given a warrant, and is ordered to go and arrest him—don't you think, in exercising a proper judgment, he 111 ought to go and arrest him at once, if he is stated to be a person that is fleeing from justice? A. If I have not got anything exactly that is more important than that, I certainly take that up; but if I have got something more important—sometimes I have a murder case on hand, you know.

Q. What did you have on this occasion that was more important? A. That I refuse to answer. That is

112 my detective business. I could not answer you that question. You may have a friend that I have got on hand yet, and you may give him a little notice to get away. *Mr. Prevost.*—I move that the latter part of the answer be stricken out. Motion withdrawn. Question repeated. A. I refuse to answer that question. *Mr. Prevost.*—The question tends to show whether or not, in the opinion of those who are persecuting this man, or prosecuting him as the case may (prosecuting, I suppose, in their minds) that there was no particular hurry, and that they did not consider him to be a person flying from justice. *The Commissioner.*—I will not try that issue. Exception taken.

113 Q. You have stated that Mr. Ball accompanied you to the hotel, or that he met you there? A. Yes, he was at the hotel when I came up there.

Q. Did you meet Mr. Ball before you found Mr. Oteiza? A. Yes.

Q. Where did you meet Mr. Ball? A. On the sidewalk.

Q. In front of the hotel? A. Yes.

Q. How did you find Mr. Oteiza? A. When I came up there, Mr. Mehan stated to me that he had a man watching him, and he introduced me to Mr. Ball. That was the man. So Mr. Ball stated that the man was up in his room, 93, Hotel Brunswick. So I went up at once; but he was not there; and we went back on the

114 sidewalk, and waited about two hours or two hours and a half. Then the prisoner did come up Fifth avenue to the hotel.

Q. Then when you went up to arrest him the prisoner was not in the hotel? A. I went up in the elevator with him, and didn't say anything until he was in the room.

Q. You do not understand my question. When you first went to the hotel the prisoner was not in? A. He was not in.

Q. Did you look over the hotel register? A. I did not. 115

Q. Do you know whether or not the prisoner registered in the hotel? A. So I understood, under his name.

Q. How did he register? Under his own name? A. So I understood; I have not seen it.

Q. Where was his room? A. Room 93.

Q. On what floor? A. It is between the fifth and sixth floor; it is an extra room that goes there.

Q. You say that Mr. Ball had been watching the man? A. That was what I understood. I could not——

Q. And you stated that the prisoner was away from the hotel at the time. Did you ask Mr. Ball where he was? A. I did ask Mr. Ball where he was—yes. 116

Q. What did Mr. Ball say? A. He was in his room, he said.

Q. And you went to his room? A. Yes.

Q. And did not find him there? A. No.

Q. What did Mr. Ball say then? A. Well, he said, "He must be around somewhere, because his baggage is there."

Q. In other words, he had been watching the baggage then, and not the man? A. That I can't say.

Q. Was Mr. Oteiza alone when he came up Fifth avenue? A. All alone.

Q. From what direction did he come? A. From down town. 117

Q. From down town? A. On the east side.

Q. What did you say when you arrested him? A. What I said?

Q. Yes. A. I took my warrant out, and told him that I had a warrant for him for his arrest.

Q. What did he say? A. He said, "All right, all right!"

118 Q. Did he make any opposition? A. Nothing whatever.

Q. Did he seem to you to be hiding? A. Not at all.

Q. Not at all? A. Not at all.

Q. Did he willingly give you the pocketbooks which have been presented here? A. Yes

Q. Did he give you the keys of his trunks? A. Everything.

Q. He made no objection? A. Nothing.

Q. He aided you in every way possible to examine everything that he had? A. He did.

Q. Did you find upon his person or among his effects any bonds or coupons of the Spanish or Cuban Government? A. No.

119 Q. Did you find any money on him whatever? A. I did.

Q. How much? A. I found—I didn't keep any memorandum of it, because I handed him the money back.

Q. Let us have your best recollection of the matter? A. About eighty dollars in gold and about one hundred dollars in gold—in five dollar gold pieces and in ten dollar gold pieces—two rolls; and $102 in paper money.

Q. Of the United States? A. Yes; and I guess $80 in paper money—yes.

Counsel for Spain.—Eighty dollars? *Witness.*—Be-

120 sides this; it was extra, you know.

Q. Anything else? A. Then I found some person stamps—money stamps—twenty-five cents, or whatever it is, in the pocketbook.

Counsel for Spain.—Cuban currency?

Q. Did you find anything else? A. Three thousand and some odd francs.

Q. Did you find the francs, or did you find a draft for the francs? A. I found a draft.

Q. By whom was that draft drawn? A. I could not 121
tell.

Q. Where was it made out—here in New York? A. Here in New York City.

Q. And it was drawn to be made payable where? A. Paris.

Q. To whose order was it made out? A. That I could not tell.

Q. Don't you remember that, as matter of fact, it was made out to the order of this defendant? A. I think it was.

Q. You think it was? A. Yes.

Q. At the time that you arrested him, did he make any attempt to deny his identity or to seek to escape? 122
A. Nothing whatever.

Q. Did you find upon him any sum of money, or evidence of indebtedness, of one or two hundred thousand dollars or more? A. Well, that I could not state, because I could not read the Spanish language. The papers I found there, certainly I don't know if they contained anything of that kind.

Q. You didn't find any bonds? A. No.

Q. You didn't find any coupons? A. No.

Q. And you didn't find anything else that seemed to be money except what you have stated? A. Exactly.

A. What is Mr. Ball's name? A. I don't know.

Q. Who else was with you? You mentioned a Mr. 123
Mehan? A. Afterwards. After I did make the arrest and so on, about ten or fifteen minutes afterwards, Mr. Mehan did come in.

Q. What is Mr. Mehan's name and address? A. I could not tell.

The Deputy Marshal.—What do you want me to do with those papers? I will hand them back, if you have no objection, and get a receipt for them. *Counsel for*

124 *Spain.*—We do not wish to use them. *Mr. Prevost.*—If you do not wish to use them, I ask that the Marshal be instructed to turn them over to us. I don't know what they are. *Counsel for Spain.*—You had better let them stand for a day or two. We have not had a chance to look at them. *Mr. Prevost.*—You have had two weeks. *Counsel for Spain.*—We have had two weeks, but we have not had the papers. *Mr. Prevost.*—We ask that the papers be returned to us. *Counsel for Spain.*—The only objection we have is that we have not had a chance to examine the papers. *Mr. Prevost.*—You had a chance so far that you picked out what you wanted.

125 *Counsel for Spain.*—We examined them at night in the hotel. *The Commissioner.*—For the present let them remain in the hands of the Marshal. If there should be any special reason why the defendant should have them at any subsequent time, you can make an application to have them from the Marshal. *Mr. Prevost.*—We make the application now. *The Commissioner.*—For the present we will let them remain where they are now. Exception taken. *Mr. Prevost.*—Is that the evidence? *Counsel for Spain,*—There is nothing more to day. *Mr. Prevost.*—I move for the discharge of the prisoner. Motion denied. Exception taken.—*Counsel for Spain.*—We renew our motion for leave to have time to correct the certificate of the consul. It will take ten

126 days; but if we get the ten days for that purpose, your Honor can give us another day to put in, probably, some more proof. *Mr. Prevost.*—We object to an adjournment. Objection overruled. Exception taken. The warrant of arrest (original) is marked Exhibit I for identification, January 14, 1890. Translation thereof, Exhibit No. 2 for identification, January 14, 1890. Proceedings received from Cuba, marked Exhibit No. 3 for identification, January 14, 1890. (Mr. Prevost

borrows the papers from the Marshal, by the consent of the other side). 127

Hearing adjourned to Friday, January 24, 1890, at 11 o'clock A. M.

NEW YORK, January 24, 1890, 11 o'clock A. M.

Present—THE COMMISSIONER. Messrs. GONZALES and Judge for demanding Government. Messrs. SOLOMON and PREVOST for the prisoner. The prisoner is produced by the U. S. Deputy Marshal. Case called.

Counsel for Spain state that they sent the record of proceedings received from Cuba back to Cuba the day of the last adjournment, by a special messenger of the Consul, and that they received them back from Cuba on the 22d inst.; and that they now offer them in evidence. The Commissioner examines the certificate. *Mr. Prevost.*—I object to this. There is no magic effect to be attributed to the words "similar purposes"; the words "similar purposes" are to be understood in a rational sense; and the only way that we can get at their meaning is to examine the section which contains them and see what it contains. And I think, in view of that examination, and in view of what I will say, your Honor will agree with me that, however defective the certificate may have been which was formerly presented, this is even more so, although at first sight, I grant, it appears to be different. (Counsel reads the section of the statute.) What does that mean? To be received as evidence for extradition purposes. That is what the words "similar purposes" mean. That is why they are presented here. These are sought to be introduced in evidence in extradition proceedings. That is what the words "similar purposes" mean. What does the certificate say? Not a word about evidence; not a word about extradition proceedings. It uses the words 128 129

130 "similar purposes", as if that was sufficient to cover the whole question. (Counsel reads said certificate, and refers to the former certificate.) I ask the privilege to to be allowed to see the original certificate which was presented. *Counsel for Spain* — At the present moment I cannot produce the original certificate. I produce the original warrant, which warrant contained, or had annexed to it, the original certificate—of which we have a copy. *The Commissioner* (to counsel for prisoner).—Do you admit that this is a copy? *Mr. Prevost.*—I don't know. (Decision reserved as to the paper marked Exhibit 2 for identification.) *Counsel for Spain.*—We offer to present proof by Mr. Gonzales and myself that this copy of the old certificate is an exact, literal copy
131 of the whole of the old certificate as annexed to the exhibit when first presented. *Mr. Solomon.*—Present the original. That is the best proof. *Counsel for Spain.*—I think the Consul down in Havana has retained the old certificate. This copy was here in Court the day the others were presented, and that copy was given by me to Mr. Prevost.

The Commissioner.—If the original is in existence, you will have to produce it. *Counsel for Spain.*—We will be able to do that very easily. Now I offer this paper. It is Exhibit 3 for identification. *Mr. Prevost.*—I object to this on the same grounds: that it does not state that it is receivable in the Courts of Cuba and
132 Spain in extradition matters; that there is nothing to show in that certificate that there is any question of extradition proceedings—that there is any charge of criminality against this accused in relation to this matter. As I said before, he has simply used the words "similar purposes"; and we must take those and see what they mean, Objection overruled. Exception taken. *Counsel for Spain.*—We wish time to translate this document. We have it partly translated; and we have

made an agreement, outside of the hearing, with the 133
counsel for the other side, that we would accept a translation made by Mr. Ponce de Leon, and he has agreed, I understand, informally. The government will pay for that, and he will be at no expense. We offer to accept his translation, as we understand he is interested in the case. *Mr. Prevost.*—Oh, no.—Certainly, I have no objection to that; but I do not want my acceptance of that in any way to be an admission that I agree to any adjournment whatever. If any adjournment is to be had, I will agree that Mr. Ponce de Leon is to make the translation. *Counsel for Spain.*—And you will stand by his translation? *Mr. Prevost.*—Yes, sir. *The Commissioner.*—I am inclined to think, from a casual inspection, that the two certificates appended to the 134
order of arrest can be construed to supplement each other, and together would comply with the statute. *Counsel for Spain.*—This paper offered this morning as the order of arrest is the original order of arrest, which was marked for identification on the 14th of January, 1890, at the last hearing, as Exhibit No. 1 for identification. The certificate appended to it, as now offered, is a new certificate. The old certificate, to which the Commissioner refers, is dated the 9th of January, 1890, and is not in my possession now. We offer to show, by the Consul of Spain here and by an employee of the government, that this Exhibit 1 for identification, of January 14, 1890, is the identical paper, less the certifi- 135
cate, which was offered at the last hearing; and to show that we sent it to Havana by an employee of the government, who presented it to the Consul, and brought it back. We offer to show, also, that the copy of the old certificate which is now present is an exact copy, made at the time of the last hearing, of the first certificate, which is not now present. And this is the copy which we furnished to the other side; and my recollection is

136 it was two days after the hearing; and this was read at the time of the hearing by the other side.

The Commissioner.—When was the present certificate received? *Counsel for Spain.*—The present certificate was received the day before yesterday by us at ten o'clock in the morning. *The Commissioner.*—After the paper which you furnished to the other side, which you claim was a copy, was furnished? *Counsel for Spain.*—Yes, sir. *The Commissioner.*—(To counsel for prisoner.) Do you admit that the copy of the certificate sent you was a correct copy of the original? *Mr. Prevost*—I have had no opportunity of comparing it.

The Commissioner.—As I understand you, the order of arrest which is offered to-day is the same one to
137 which the certificate was appended when the order of arrest was offered at the last hearing? *Counsel for Spain.*—Yes, sir. *The Commissioner.*—That that order of arrest has subsequently been transmitted to Havana, in order to have the certificate amended? *Counsel for Spain.*—Yes, sir.

The Commissioner.—And that the Counsel there, instead of returning the same certificate with the amendment, has chosen to annex another certificate following the literal words of the statute? *Counsel for Spain.*—Yes, sir. *The Commissioner.*—But has failed to return the old certificate at the same time? *Counsel for Spain.*—Yes, sir.

138 *The Commissioner.*—(After examining the certificate and the statute.) While the the certificate follows literally the words of the statute as to the authentication, nevertheless it is somewhat blind, owing to the fact that the word "evidence" does not appear in the certificate. Still, the first part of the certificate contains a statement to the effect that a warrant has been issued in a criminal Court of Cuba for the arrest of the defendant for embezzlement; it is true this statement

appears in an early part of the certificate, nevertheless 139
the whole certificate must be construed as one; and I am of opinion that it complies substantially with the requirements of the statute, although I do not think the question is entirely free from doubt. I cannot conceive that the certificate can be construed in any other sense than that it means that the certificate is so authenticated as to entitle it to be used as evidence of the offense. Exception taken. Said papers are again marked Exhibit 1 for ident., Exhibit 2 for ident. and Exhibit 3 for ident., January 24, 1890. *Mr. Prevost.*—I would like to have it understood that until I have had an opportunity to examine the contents of these papers, I am not to be compelled to make any objections. That is to 140
say, after I have examined them I will object to the contents. *The Commissioner.*—Nothing is admitted in evidence until the translation is produced. Certificate to warrant of arrest, marked Exhibit 1*a* for ident., January 24, 1890. Certificate to proceedings, marked Exhibit 3*a* for ident., January 24, 1890. *Counsel for Spain.*—We will now offer in evidence the translations of the papers put in at the last hearing on the testimony of Mr. Bernhard.

ANTONIO C. GONZALEZ, called on behalf of demanding Government, being duly sworn, testifies as follows: 141

Direct examination:

Q. You were born in Cuba? A. Yes.

Q. Your native language is Spanish? A. Yes.

Q. You are thoroughly acquainted with Spanish? A. Yes.

Q. And you understand English? A. Yes.

Q. You have been practicing law in this city for many years? A. Yes.

142 Q. Translations from Spanish into English legal documents and others for many years? A. Yes.

Q. Have you made translations of these various exhibits that I new show you, annexed to them severally? (Papers shown witness.) A. Yes.

Q. Will you swear that they are true and correct translations of these exhibits?

Mr. Prevost.—Objected to, on the ground that the witness is not competent, by reason of his relation to the prosecuting Government. Objection overruled. Exception taken. A. Yes.

Q. Are these translations true and correct translations from Spanish into English of these exhibits? Same objection, ruling and exception. A. Yes. Said
143 papers offered in evidence. Objected to on same ground. Objection overruled. Exception taken. Said papers are now marked as follows: Translation of Exhibit 11—Complainant's Exhibit 11*a*, January 24, 1890. Translation of Exhibit 12—Complainant's Exhibit 12*a*, January 24, 1890. Translation of Exhibit 13—Complainant's Exhibit 13*a*, January 24, 1890. Translation of Exhibit 14—Complainant's Exhibit 14*a*, January 24, 1890. Translation of Exhibit 15—Complainant's Exhibit 15*a*, January 24, 1890.

Counsel for Spain.—Will you admit the two papers now presented to you? (Handing papers to counsel for prisoner.) *Mr. Prevost.*—I admit the one which pur-
144 ports to be a passport of Mr. Oteiza. I object to the other paper, which purports to be a pass for one Antonio Munas Romero, as being irrelevant and immaterial. *Counsel for Spain.*—But you admit it was on his person. *Mr. Prevost.*—Yes. No objection is taken on the ground of want of formal proof that it was found on the person of the prisoner. *Counsel for Spain.*—We offer both sides. A man has been arrested in the name of the other one; the official who

signed the license has been arrested for issuing these documents without authority and we intend to connect this directly with the statements in the depositions. *The Commissioner.*—On the statement made by counsel that he proposes to connect the defendant with the paper objected to, it is allowed. Exception taken. Said papers are marked Complainant's Exhibits 16 and 17, January 24, 1890. 145

Q. Mr. Gonzales, have you made a translation of these two Exhibits 16 and 17? A. Yes.

Q. From Spanish into English? A. From Spanish into English.

Q. On both sides of the papers? A. On both sides of the papers. 146

Q. (Two papers shown witness.) I hand you two papers, and ask you if these are the translations that you have made of these papers severally? A. Yes.

Q. And of the backs of them? A. Yes.

Q. Are they true and correct translations from Spanish into English? Objected to on the ground of the incompetency of the witness. Objection overruled. Exception taken. A. They are. Said translation offered in evidence. Same objection, ruling and exception. Marked Complainant's Exhibits 16*a* and 17*a*, January 24, 1890.

Counsel for Spain.—That is all to-day.

Counsel for the prisoner moves for his discharge, on the ground that there is no evidence before the Commissioner against the prisoner; and that the limit of twenty-five days fixed by the treaty has expired, or is about to expire. *The Commissioner.*—Motion denied. Thus far there is no reason to believe that the prosecuting Government are not conducting these proceedings in good faith, and that they do not themselves believe that they have sufficient evidence upon which to ask for the prisoner's extradition. There is, furthermore, quite a large 147

148 amount of written matter, to which is annexed a certificate complying with the Revised Statutes, as I have already held. And all that seems to be lacking to make the document, which is a very bulky one, admissible in evidence, is the absence of the translations. Of course, a brief inspection of this document shows that the demanding Government could not possibly obtain the translation in the time fixed for the last adjournment. Exception taken. *Mr. Prevost.*—I object to any adjournment, and take exception to the fact that any adjournment is granted ; but, if that be granted, I agree to have it two weeks. *Counsel for Spain.*—That is satisfactory. *Mr. Prevost.*—I object to the adjournment. *Counsel for Spain.*—We have overlooked proof of the
149 translation of the warrant, to which the certificate in question is appended, and we now offer such proof.

Q. (Said paper shown witness.) Have you translated this document? Same objection, ruling and exception. A. Yes.

Q. (Paper shown witness.) And this translation is a true and correct translation from Spanish into English of that document? Same objection, ruling and exception. A. Yes.

Said paper (heretofore marked Exhibit 2 for identification) is now offered in evidence. Objected to. Admitted subject to objection, counsel for defendant stating that they wish to examine and compare the origi-
150 nal with the copy, and examine the contents. *Mr. Prevost.*—We take exception not only to the translation, but to the original. *The Commissioner.*—Then, in the meantime, counsel, pending the adjournment, can examine the warrant of arrest, and make a motion to strike it from the record at the next hearing, if he desires so to do. Said paper marked Complainant's Exhibit 2 in evidence, January 24, 1890. Hearing adjourned to Friday, Feb. 7, 1890, 11 A. M.

NEW YORK, February 7, 1890, at 11 o'clock A. M. 151

Present—THE COMMISSIONER; Messrs. GONZALES and JUDGE for Demanding Government. MR. MALLET-PREVOST for the prisoner. The prisoner is produced by the U. S. Deputy Marshal.

NESTOR PONCE DE LEON, called on behalf of Demanding Government, being duly sworn, testifies as follows:

Direct-examination by Counsel for Spain:

Q. You are thoroughly acquainted with Spanish language, are you not? A. I think so.

Q. That is your native language? A. That is my native language.

152

Q. You have been engaged in translating from Spanish into English for many years in this city? A. About twenty years.

Q. Have you made a translation of Exhibit 3, now shown you? (Exhibit 3 shown witness.) A. Yes.

Q. (Paper shown witness.) Is this the translation? A. Yes.

Q. All except the end, where the certificate occurs? A. Yes, the certificate of the United States Consul.

Q. That you have compared with the original? A. I have compared the certificate with the original.

Q. Is this a correct translation? A. It is a correct translation. Counsel for Spain offers in evidence said original of proceedings and the translation thereof. 153

Mr. Mallet-Prevost.—Before making any objections to these documents, I should like to have an opportunity to examine them, and therefore I would ask your Honor to allow me to reserve that privilege until the next hearing. *The Commissioner.*—Admitted subject to objection. (Counsel for Spain hand a copy of said translation of Exhibit 3 to counsel for the prisoner). *Counsel for Spain.*—We have presented to your Honor, before

154 these papers were let into evidence, the various papers that we found on the person of the prisoner, and so far we do not see any reason for presenting any more evidence. The only possible point on which evidence might be necessary would be to show that the papers had been properly authenticated, or to establish some doubtful point of Spanish law. No such point has arisen yet. There is one small matter I would like to put in the shape of testimony, unless Mr. Prevost will admit it. On one of the papers we have put in evidence is to be found, on the back, permission to travel on the Peninsula. We want to show that these words "the Peninsula" mean "in Spain," and I do not think he will ob-
155 ject to admit that. Your Honor cannot infer it without proof. Will you admit that, Mr. Prevost? Will you admit that the word "Peninsula," in Spain and amongst Spanish speaking people, means Spain? *Mr. Mallet-Prevost.*—I have no objection to that. That is admitted. I simply admit that where the word "Peninsula" is used in a Spanish passport, it means Spain. *Counsel for Spain.*—If the admission is to be of no value, there is no use making it. I want to know if it is applicable to this paper or not. A general admission, which is to be of no use to me, is of no use at all. On the back of Exhibit 17, is found permission to travel on the Peninsula. *Mr. Mallet-Prevost.*—This is admitted: That the word "Peninsula" therein used re-
156 fers to Spain.

MIGUEL SUAREZ GUANES, recalled and examined by Counsel for Spain:

Q. Have you been accustomed for many years to see the word "The Peninsula" used in documents, official and otherwise? *Mr. Mallet-Prevost.*—What do you propose to prove by this witness? *Counsel for Spain.*—I

propose to prove that the word "Peninsula," when it 157
is used in these documents, means Spain. *Mr. Mallet-Prevost.*—I have admitted that. I admit that. *Counsel for Spain.*—I offer to your Honor, in lieu of the original first certificate retained by Mr. Williams, his own certified copy, certified as Consul of the United States, certified that that is a copy of the first one that he retained. *Mr. Mallet-Prevost.*—I object to this on the ground that this does not specify to what proceeding it was annexed. It does not appear from this that after the taking of this certificate from those proceedings, those proceedings were not in some manner changed and subsequently the other added. It is entirely indefinite. I don't know anything about it. I 158
am not compelled to accept anything of this kind when it it is in such indefinite terms. All we know is that this is a certificate which has been annexed to some documents. I don't know what those documents are. Of course, I know the other side state these documents are the documents, and I suppose they do it in perfectly good faith ; but I don't know anything about it. *Counsel for Spain.*—I think under the act relating to this case, it is a good identification. It says it certifies to the official proceedings, existing against Oteiza and others, which certificate was withdrawn on the 18th of January, and which he says was first affixed on the 12th of January. I think it is fully identified. If you want proof I will swear to it. 159
Mr. Mallet-Prevost.—You cannot swear to it. *Counsel for Spain.*—Those are the dates. *Mr. Gonzales.*—Mr. Prevost has a copy of the original furnished to him by us, and that certificate will show that the date was the 9th. And the latest certificate shows this was the 18th. *Counsel for Spain.*—He makes the connection fully by saying it was withdrawn on the 18th and a new one substituted. We have the young

160 man that went down with these papers, and we ask to prove by that young man that there was nothing done except to annex the new certificate ; that they were not tampered with, or in any way altered. You have the date of the 18th of January, 1890,—the new certicate. *Mr. Mallet-Prevost.*—I also object to it on the ground that it is a copy. Objection sustained. Said paper marked Exhibits 18 and 19 for ident. February 7, 1890.

Counsel for Spain.—We have some translations of some of the Exhibits which we put in hitherto which we have not yet had time to complete. *Mr. Mallet-Prevost.*—I have no objection to their being put in sub-
161 sequently. *The Commissioner.* –Counsel for Spain will have leave hereafter to put in further evidence in relation to the certificate.

COUNSEL FOR SPAIN REST.

Mr. Mallet-Prevost.—At a former hearing the complainants offered in evidence a document in Spanish purporting to be a warrant of arrest against this defendant ; and they have also offered a translation of the same, made by Mr. Gonzales. Mr. Gonzales appeared on the stand and swore to the correctness of the translation ; and the matters were then allowed to stand until I should have the opportunity to examine them and to
162 make any objections that might be proper, as has been done to-day with reference to this larger document. I therefore wish to ask Mr. Gonzales a few questions on cross-examination with reference to this translation.

ANTONIO C. GONZALES, recalled for further cross-examination by Mr. Mallet-Prevost :

Q. Mr. Gonzales, you are familiar with the extradi-

tion treaty between Spain and the United States? A. Yes. 163

Q. Both with the English and the Spanish copies? A. Yes.

Q. You have examined, have you not, the second article, and the twelfth section of that article, both in the original and in the supplemental treaty? A. What article is referred to?

Q. Article 2, section 12? A. Yes.

Q. You will note that I refer to the original treaty of 1877, and to the English copy of that treaty. The article reads as follows: "The embezzlement of public "funds committed within the jurisdiction of one or "the other party by public officers or depositors." That is correct, is it not? A. No. 164

Q. What is the reading of it? A. "The embezzle- "ment or criminal malversation of public funds."

Q. The original treaty—the treaty of 1877 I am referring to, and not to the one of 1882? A. Yes, article second, paragraph 12.

Q. It reads: "Embezzlement of public funds com- "mitted within the jurisdiction of one or the other "party by public officers?" A. Yes.

Q. Please look at the Spanish copy of that treaty, and state whether or not the word "substraccion" does not occur in the Spanish copy as the equivalent of "embezzlement" in the English copy? A. You want me to give the meaning, the translation, of the word 165 "substraccion."

Q. No, I do not want that at all; I only ask what word is used in the Spanish copy to take the place of "embezzlement" in the English copy. I do not want the meaning of the word at all. What word is used? A. What page is it?

Q. I don't know what page the Spanish one is. A. "Substraccion"—not in that paragraph; in page 3.

166 Q. Paragraph 12, article 2—what word in Spanish in the treaty corresponds to the work "embezzlement" in the English treaty? A. "Substraccion."

Q. Turn to the supplemental treaty of 1882, and to the same article, and to the same paragraph—paragraph 12. The English of that paragraph reads as follows, does it not: "The embezzlement or criminal malversa-" tion of public funds committed within the jurisdic-" tion of one or the other party by public officers of " depositors?" A. Yes.

Q. What word in the Spanish copy of that treaty corresponds to the word "embezzlement?" A. In that paragraph?

Q. Yes. A. The same word, "substraccion."

167 Q. What words in the Spanish copy correspond to the word "criminal malversation?" A. In the same paragraph—"malversacion criminal."

Q. In other words, "malversacion criminal" is by the treaty translated into English by the phrase "criminal malversation." A. Yes, sometimes.

Q. Isn't it here? A. In that paragraph, yes.

Q. Will you please take the Spanish and the English of this warrant of arrest. Look at the Spanish copy, where the word "malversacion" occurs. A. In what paper?

Q. It is marked Exhibit 1. How have you translated that word in the translation which you have presented?

168 A. "Embezzlement."

Q. That word "malversacion" occurs a number of times, does it not, in the course of that warrant of arrest? A. Yes, and also in the treaty.

Q. I am not asking you about the treaty. Just please answer my question. That term "malversacion" occurs a number of times in this warrant of arrest, does it not? A. Yes.

Q. You have invariably translated that word by the

English term "embezzlement," have you not? A. Yes. 169

Q. I suppose you translated the term "malversacion" by the term "embezzlement" because you consider one the equivalent to the other, do you not? A. Yes.

Q. In your opinion, they mean exactly the same thing? A. The same thing.

Re-Direct Examination.—Q. When yon say in your opinion they mean exactly the same thing, you mean under Spanish law? A. Under the Spanish law. *Mr. Mallet-Prevost.*—I object to the question.

Q. Will you look at paragraph 13 in Article 1 of the Supplementary Treaty, and state what word is used in that paragraph for "embezzlement"? A. The English 170 say "embezzlement"; the Spanish say "malversacion".

Q. So that on looking at paragraphs 12 and 13 of Article 1, is it a fact that the Spanish translation of the word "embezzlement" is both "substraccion" and "malversacion"? Objected to that the treaty speaks for itself and the witness has already testified to that effect. Objection overruled. A. Yes.

Q. You have been translating from Spanish into English for a great many years, haven't you? A. Yes.

Q. And all those years legal documents? A. Yes.

Q. Is it not a fact that in Spanish they use indiscriminately one word or several words to mean the same 171 offence? A. Yes.

Q. And is it not possible to use an entirely different word from the words found in the treaty to describe embezzlement—the words they use of "malversacion" and "substraccion"? A. Yes.

Q. What is that word? A. Embezzlement or malversation of funds—

Q. No. There is another Spanish word which they use to describe that? A. Yes—"peculado".

172 Q. Which does not appear in the treaty? A. It does not appear.

Q. This results from the immense variety and richness of the Spanish language, does it not? A. Yes.

Q. And they have not, have they, in their legal documents and in their laws any strict definitions, such as we have? *Mr. Mallet-Prevost.*—Objected to. That involves a legal opinion; and unless he qualifies as a legal expert, he cannot answer that. Question withdrawn. *Mr. Mallet-Prevost.*—I would like to have a day or two to examine this document, so that I may make my objections to it, and I would ask an adjournment.

173 *The Commissioner.*—How long a time do you want to examine these papers? *Mr. Mallet-Prevost.*—I will be ready on Tuesday morning at eleven o'clock. *The Commissioner.*—I shall have to give you Wednesday, instead of Tuesday. The hearing is adjourned to Wednesday at half-past eleven. (By consent Counsel for Spain take with them the original proceedings.) Hearing adjourned to Wednesday, February 12, 1890, at 11:30 A. M.

NEW YORK, February 12, 1890.—11:30 o'clock A. M.

Present.—The Commissioner.—Messrs. OLCOTT and GONZALES, for demanding government.—Mr. MALLET-
174 PREVOST, for the prisoner.—The prisoner is produced by the U. S. Deputy Marshal.

The Commissioner hands counsel a telegram received by him. Said telegram is marked Exhibit 20 for ident., February 12, 1890. *Mr. Olcott.*—If your Honor please, I had an intimation that such was the case—that there was an additional affidavit or deposition that had been made by this same witness Andrade, whose prior deposition appears in the docket forwarded from Cuba. Of

course, I cannot say absolutely what is in the deposition 175
of Andrade amplifying the evidence already given by him ; but I shall take the liberty, and ask the privilege, of presenting to your Honor a cablegram from Cuba, dated the 10th of February, the version of which in the the English language is produced, and is as follows : "By steamer Olivette, which sailed to-day, I forward "important deposition of the broker Andrade, which it "is well the Court should be informed of, and by steam- "er of day after to-morrow, I send the original Certifi- "cates which you ask by to-day's Telegram." (That refers to Consul-General Williams.) "It will be well "to obtain extension of time in the proceedings on the "demand until both documents arrive. Consul Will- 176
"iams has sent telegram to Commissioner, stating that "he had legalized the first of said documents." That is evidently the cable to which reference has been made by the Commissioner. (Original of said cable marked Exhibit 21 for ident., February 12, 1890. Copy of same marked Exhibit 22 for ident., February 12, 1890. Translation of same in Spanish, marked Exhibit 23 for ident., February 12, 1890. Translation of same into English, marked Exhibit 24 for ident., February 12, 1890.)

Mr. Olcott.—In view of the fact of the direct connection of Andrade with the person whose extradition is demanded, we shall have to ask the Commissioner to be good enough to give us time for the appearance of the deposition. The steamer arrives here on Monday ; so 177
we desire no excessive delay. But your Honor knows that this is a matter to be produced link by link, and it rests entirely in your Honor's discretion. This man Andrade is a very important witness ; he was the channel or means of the disposal of the evidence of the Public Debt of the Island of Cuba, coming directly from the accused, and with all the indicia of being a part and parcel of the *corpus delicti* that is before your Honor,

178 and which is the subject matter of this extradition proceeding. And therefore it is, and in view of the importance of this thing, which is in a double measure presented to your Honor, first through the Consul General of the United States of America at Havana, and secondly through the cablegram of Mr. Cavada, who is acting Captain General, General Salamanca having died within the last few days, as your Honor is undoubtedly aware, as it is matter of public notoriety, I say, in view of these things, it should be nothing more than proper that this short adjournment should be granted.

Counsel for the prisoner objects to the adjournment, on the ground that the prisoner was arrested on the 2nd
179 day of January, and the demanding government has had ample opportunity to present all the evidence in the case ; that the twenty-five days allowed by the treaty have long since elapsed ; that the demanding government has rested its case, and it has no right to reopen it ; that the telegram presented does not specify what is proposed to be proved. Counsel states that he admits that, if the testimony presented be true, the receipts found upon the person of the prisoner were receipts given by Andrade for coupons which are here in question. Counsel for prisoner here reads from the deposition of Andrade, beginning at page 64.

The Commissioner.—Do I understand the govern-
180 ment will submit their case then ? *Mr. Olcott.*—We expect then to close.

Mr. Mallet-Prevost. I demand to know what they propose to prove by these depositions of Andrade, in order that I may have an opportunity to admit them. Counsel for Spain state they do not know. *Mr. Mallet-Prevost.*—I move for the discharge of the prisoner on the evidence as presented. Motion denied.

Mr. Mallet-Prevost.—I have made certain admissions upon the record in order to avoid this adjournment.

The Commissioner.—Those admissions should be all stricken from the record. Those were only proffers to prevent the adjournment. *Mr. Olcott.*—The man Andrade has been in prison and is under arrest. *The Commissioner.*—As I understand the application of the government, there is but this one deposition, at all events, the deposition of a witness who, as already appears, has been examined in the proceeedings which have been submitted ; and I see no reason, therefore, why at that time, the prosecuting government expressing it as their intention at that time to rest their case, the motion to discharge the prisoner should not be heard on that occassion. If counsel choose to go on with their argument, I will hear it at that time. *Mr. Mallet-Prevost.*—If I choose to go on—or I may choose to present evidence myself.—*Mr. Olcott.*—I think we ought to understand each other a little in advance ; because, if we are to sum up, undoubtedly we ought to be prepared ; and I imagine, if the deposition comes, that you would not want to sum up the same day. *Mr. Mallet-Prevost.*—I cannot tell what the deposition may be,—I take an exception to any adjournment being granted. Hearing adjourned to Tuesday, February 18, 1890, at 12 o'clock M.

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NEW YORK, February 18, 1890.—12 o'clock M.

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Present—The Commissioner. Messrs. OLCOTT and GONZALES, for demanding Government. Mr. MALLET-PREVOST, for the prisoner. U. S. Deputy Marshal Kennedy presents a letter to the Commissioner. (Marked Exhibit A for ident., February 18, 1890.)

Mr. Kennedy.—In pursuance of the request of counsel for the defendant in this case the Marshal directed the officer not to bring this man down. We issued an order last evening to Mr. Bernhard to bring him down ;

184 and counsel made this request to me this morning, and I sent a letter to the jail countermanding that order of last night, and asking Mr. Bernhard to inquire as to the condition of the man. Mr. Bernhard now reports that he thinks he is able to come down; but I only just learned of this—five minutes before the time I came in here I had Mr. Bernhard's report. *Mr. Mallet-Prevost.*—I did not see the prisoner this morning, but last night I saw he had been ill. *Mr. Kennedy.*—He had been ill. *Mr. Olcott.*—I will agree to an adjournment. *Mr. Mallet-Prevost.*—I wish to go on. It seems to me that, if through my mistake this thing has occurred, the prisoner ought not to suffer from it. I have made this application in good faith, and I am prepared to go on; and
185 I know that the prisoner would have no objection to it, because I spoke to him last night about it, and it was on that account that I made it. If the other side insist that he should be here, let him be sent for at once. The hearing to-day will probably consume some time, because your Honor stated at the last hearing that you would hear arguments in the closing of the whole matter; and testimony will have to be presented, and that will take some time. Under the circumstances we may be here two or three hours. There will be but very little time consumed in bringing him from the jail, which could be done in less than an hour, and I am ready to go on the moment he comes. It seems to me that, in
186 justice this matter should go on, and it ought not to go over to another day. *Mr. Olcott.*—If the man can come, I am ready to go on. I made my engagements to conform to this case. *The Commissioner.*—I understand that the man is sick, and also does not want to appear, but that, if it is absolutely necessary for him to come down, we can wait and he can be brought down. I think, therefore, that it would be better to wait until to-morrow, as I understand the testimony is not all in.

Mr. Olcott.—The testimony is now here. *The Commissioner.*—Show the testimony to the other side, so that counsel can be ready to go on to-morrow with the argument, provided the prisoner is present. I do not think we had better wait here to take the chance of his being brought down, as I judge from what I learn that the man is or has been quite ill. 187

Mr. Kennedy.—The officer reports that the man is in condition to come down. *Mr. Bernhard.*—He was sick yesterday. That the jailer told me. I asked what was the matter with him, and he said he felt better, but that he had it in his head and stomach—complained of his stomach. The jailer saw he was sick and sent for the doctor. *The Commissioner.*—I think that the matter had better stand over until to-morrow; and I will hear it to-morrow, if counsel prefer. Counsel for prisoner excepts. *Mr. Mallet-Prevost.*—What is the objection to going on now? *Mr. Olcott.*—The matter has been decided. *Mr. Bernhard.*—I am not a doctor, and I cannot say what is the matter with the man, but the jailer saw he was very sick yesterday. *The Commissioner.*—I think, under the circumstances, it is better to adjourn the matter until to-morrow morning. *Mr. Mallet-Prevost.*—I understood that this matter will be closed to-morrow. 188

The Commissioner.—There is no understanding about it, as far as I have learned. The case will go on regularly, as other cases do. *Mr. Mallet-Prevost.*—I understood your Honor at the last hearing to state that you would hear arguments to close the whole matter, and I am ready to do just as your Honor directs; and if the matter is adjourned until to-morrow, I trust it will be arranged upon that understanding. *The Commissioner.*—I think the other side have used every effort to prosecute this case diligently. I do not see any ground to think that they are disposed to delay. Hearing ad- 189

190 journned to Wednesday, February 19, 1890, at 11 o'clock A. M.

NEW YORK, February 19, 1890, 11 o'clock A. M.

Present.—THE COMMISSIONER. Messrs. OLCOTT and GONZALES, for demanding Government. Mr. MALLET-PREVOST, for the prisoner. The prisoner is produced by the U. S. Deputy Marshal.

Mr. Olcott.—At the hearing prior to the last one, the counsel for Spain made mention of a certain deposition about to arrive—which is now offered in evidence. The translation has already been furnished to the other side.
191 The original and translation are both offered. *Mr. Mallet-Prevost.*—The certificate of the Counsul General is, in my opinion, open to precisely the same objections which have been made to Exhibit 3, and I renew those objections with respect to the certificate. Over and above that, I have objections to the admission of this, and to the admission of Exhibit 3, and of the original warrant of arrest. Those objections were left open for me to make, and I am prepared to make them at this time. My objections to this paper are the same as to Exhibit 3, and in order to expedite matters, I will make objections to both at the same time. I object to Exhibit 3, and to this deposition which is now presented, on the grounds: (1). Because they are records of proceedings
192 of a Court having no jurisdiction, either of the person of the defendant, or of the subject matter of the complaint. When it comes to the presentation of evidence on the part of the defendant, I will present to your Honor laws which put that subject beyond doubt, and that will show that this Court has been acting in the whole matter without any jurisdiction whatever; and I desire at this time to make objections to them upon that ground. (2). Because they are issued by a Court hav-

ing no jurisdiction of the matter. (3). Because they do not sustain the allegations of the complaint. I think they are immaterial, and I think I can show that to your Honor. (4). Because they do not comply with the provisions of the Extradition Treaty between Spain and the United States. (5). Because they do not comply with the laws either of Spain or of the United States. (6). Because they are irregular, incompetent, irrelevant and immaterial. (7). Because they are not authenticated as required by law—with respect to the Consular certificate. My objection to this is exactly the same as that put on the record with respect to Exhibit 3, namely, that where he has used simply "similar purposes," there is nothing to show in that certificate that it would be admitted in evidence upon extradition for embezzlement. I claim that the Associate Justice of the Superior Court of Havana has not any jurisdiction. (8). Because they are signed by a magistrate having no jurisdiction in the matter. Objection overruled. Exception taken. Original of deposition marked Exhibit 25, February 19, 1890. Translation thereof marked Exhibit 25*a*, February 19, 1890.

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Mr. Mallet-Prevost.—The objections which I have made are to Exhibit 3, and to the exhibit which has just been presented and marked Exhibit 25. I now object to Exhibit 2—the warrant of arrest, on the following grounds: (1). Because it is issued by a Court having no jurisdiction of the matter. (2). Because it does not sustain the allegations of the complaint. (3). Because it does not comply with the provisions of the extradition treaty between Spain and the United States. (4). Because it does not comply with the laws either of Spain or of the United States. (5). Because it is irregular, incompetent, irrelevant, and immaterial. (6). Because it is not authenticated as required by law. (7). Because

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196 it is not a warrant of arrest. It is a paper that purports to be, but it is not.

Mr. Olcott.—Your Honor will bear in mind that that has been supplemented by a new certificate. The order of arrest is contained in this docket here as well as the other. There are two papers; they are identically the same thing; they are in this bundle, page 21. *Mr. Mallet-Prevost.*—They are not exactly the same; it may be a difference in translation, I don't know; but they apparently are not the same. *Mr. Olcott.*—That is the original warrant; this is the decree and order of the Court (indicating); in other words, that is the mandate of the Court to put into execution, and the order for the
197 mandate of the Court is this contained in the docket. Objection overruled. Exception taken.

Mr. Olcott.—At page 68 of the minutes, on the 24th of January, when the certificates that were appended to Exhibits 2 and 3 were before you, the Commissioner made this statement, "If the original is in existence, you will have to produce it." We now produce the certificates in question. *Mr. Mallet-Prevost.*—I object to them. In the first place, I think counsel on the other side is putting a meaning to your Honor's words that they did not convey—"The original must be produced." I think they attempted to present copies here; and you only meant, by saying the originals must be produced,
198 that if they attempted to put the certificates in evidence at all they must be originals. I object to these. These are not the certificates which were produced at that time; and that is evident, because, if they be originals, they have added to them another certificate. *Mr. Olcott.*—Which please read. *Mr. Mallet-Prevost.*—I do not care what it says. (Counsel reads the same.) In the original the name is scratched out. Consequently that is not a certificate. All we have is a certificate, dated February 12, stating that the foregoing was at one time

the original certificate. But it has been scratched out; 199
therefore it is no longer the certificate. *The Commissioner.*—(To counsel for prosecution.)—Do I understand the counsel to say that they offer these papers which were originally produced before me, and which were returned to Havana, and there, for some reason or other, withheld by the Consul? *Mr. Olcott.*—That is the fact, except the certificate of the Consul at Havana, certifying that the paper prefixed to his certificate was the one which was made by him on the 9th of January as a certificate, and withdrawn by him on the 18th of January, he annulling his signature thereto, and substituting for the certificate the certificate which now appears at the end of the certified 200
copy under date of January 18, 1899. *Mr. Mallet-Prevost*—I accept that statement and upon that I make my objection. Mr Olcott has stated that the Consul has substituted a new certificate for the old one. If he has substituted a new one for the old one, this is not the one that was presented. Therefore it cannot be admitted. *The Commissioner.*—As I understand, pages which I now mark in red 1, 2 and 3 are the original papers that were first produced before me, purporting to be a certificate, and which was annexed to Exhibit 3 as it was first produced? *Mr. Olcott*—Yes.

The Commissioner.—To this portion of the certificate what is the objection? *Mr. Mallet-Prevost.*—My objection to that portion of the certificate—I understand the 201
whole thing to be one—it is one certificate. But what your Honor has stated is perfectly correct. I admit that. *The Commissioner*—Let the paper be received as the paper which was originally produced before me, excluding page 4, the counsel for the defendant admitting, as I understand, that the rest of it is as it was originally produced, except that the Consul's signature has since been erased. *Mr. Mallet-Prevost*—Yes, sir. Said paper

202 marked Exhibit 27, February 19, 1890. Exception taken. *Mr. Olcott.*—This is the other certificate that was referred to, and I now offer it in evidence. (Counsel producing the same). *The Commissioner.*—The certificate which you now produce is the same, I understand counsel for the defendant to concede, as the original produced here, and annexed to the warrant of arrest, except that the last page has evidently been appended since, and the Consul General's signature erased since that time. *Mr. Mallet-Prevost.*—Yes, sir. *The Commissioner.*—Let this paper be received as the certificate which was originally produced here. Exception taken. Said paper marked Exhibit 28, February 19, 1890. *Mr. Olcott.*—That practically, closes our
203 case, but there is one thing I desire to say. I think your Honor will agree with me that there is no need of this; and I only call attention to it simply because of not having any word or phrase that needs to be commented on. The complaint charges specifically the facts, and in one part it mentions malversation and in the other embezzlement; in the title it says "charged with embezzlement or criminal malversation"; but those are in my opinion synonomous terms. And in the body of the complaint it uses the word "embezzlement", although it defines the thing in such a way that there is no question about it. But if there is any question in your Honor's mind
204 about it, I would ask to amend the wording of the complaint simply to put in the conjunction "or" after it, although it recites it in the title, and although in the treaty it defines embezzlement. It uses the Spanish, and they are convertible terms as used here—"malversacion"—"embezzlement" and here we have "embezzlement," "substraccion," or "malversation" (counsel indicating). *Mr. Mallet-Prevost.*—If my recollection serves me, Mr. Gonzales, upon my cross-examination,

stated that "embezzlement" and "malversacion" were the same. *Mr. Gonzales.*—According to the treaty. Counsel for prosecution rest, reserving the right to put in a translation of Exhibit 18. *Mr. Mallet-Prevost.*—I move for the dissmissal of this complaint, and for the discharge of the prisoner. (1). Upon the ground that no proof has been presented as to the law of Spain on the subject of embezzlement. It has been practically decided in the case of Benson, that in interpreting a treaty regard should be had to the laws of both countries. In that case the question was forgery; and it was there decided that account must be taken of the laws of Mexico as to what was forgery and what was not forgery, and that the laws of both the United States and Mexico should govern. In this case it is a question of embezzlement. Of course, your Honor can take cognizance only of the laws of the United States. And so far as the laws of Spain are concerned, we know nothing about them, and no evidence has been presented to prove them; and it is impossible for your Honor to carry out the rule that was distinctly laid down in that case; and I move to dismiss upon the ground that, it being impossible for your Honor to pass upon that, there being absolutely no proof as to what is embezzlement according to Spanish law, it is impossible to proceed. (2.) Because there is no proof as to what the criminal law of Spain is; and what the criminal law of procedure is and therefore it is impossible for you to determine whether or not these papers are in conformity to the statute and to the treaty. (3). Because the evidence fails to sustain the allegations of the complaint. The first two grounds of objection overruled; exception taken. *Mr. Mallet-Prevost.*—With regard to the last objection, I feel very positive, after making a careful examination of the evidence which has been presented by the prosecution, that they have no case here what-

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208 ever; and I have evidence which, without in any way changing the questions that are presented before you, will greatly strengthen my position; and I therefore wish to let the matter stand at present until I have presented the evidence, and if your Honor will overrule this objection for the time being, the matter can again come up upon the final hearing. I rest on the exceptions without argument. *The Commissioner.*—I will hear the other side on the merits. In substance what do you claim you have proved? *Mr. Olcott.*—There can be no question at all that when your Honor looks over it (and I will take the liberty of handing you a brief of the evidence), you will find that there are certain salient points that are incontrovertible. In the first place, it is
209 an absolute fact—it cannot be controverted—that this man was an employe of the Government; that he was in this Bureau of Debt; that you will find his appointment, in the evidence, at page 88. (Counsel reads same.) *Mr. Mallet-Prevost.*—You need not read that. *The Commissioner.*—You concede his position? *Mr. Mallet-Prevost.*—Yes, sir. Counsel for Spain proceeds to present an analysis of the depositions in evidence. Motion denied; exception taken.

Mr. Mallet-Prevost.—I offer in evidence a certificate issued by the present acting Secretary-Comptroller of the Debt, stating that Mr. Oteiza, as Secretary of the Debt, is not required to give any official bond, and this
210 is accompanied by the certificate which is required by the statute. And I offer a translation. *Mr. Olcott.*—I object to that on the ground that a certificate of that kind, which is not a part of the record in the Court, is an attempt to have the statement of a witness without the privilege of cross-examination; and it is inadmissible, incompetent, irrelevant and immaterial. *The Commissioner.*—Objection sustained. The paper may be marked for identification. Exception taken. *Mr.*

Olcott.—I move to strike from the record any definition 211
of the document proffered, and that the description be confined to the fact that a paper, stated to be signed by Jose de M. Llera, and to have been dated January 18, 1890, is offered in evidence, and, being excluded, is marked for identification exhibit so and so.

The Commissioner.—That must be stricken from the record; and counsel must not state the contents of the documents as he proceeds to offer them until the preliminary question has been passed upon as to their competency. Exception taken.

Mr. Mallett-Prevost.—I offer to prove that the Secretary-Comptroller of the Board of Debt of the Island of Cuba is not required to give an official bond; 212
and I offer in evidence a certificate, dated Havana, January 18, 1890, signed by Jose de M. Llera, and accompanied by a certificate of the United States Counsel General, required by the statute. Objected to; objection sustained; exception. *Mr. Olcott.*—I request that the gentleman be instructed that there is no such thing as offering to prove in this way. If the counsel for the accused desires to open his case, let him open his case, and then proceed in an orderly way; but in this way might foist on to the record all that one might desire to put in that way, which is not proper. If I am to make an objection to the offer to prove, I will repeat my objection. In the first place, the paper produced is not a deposition, but it is a so-called deposition. In the 213
second place, I repeat the objection that I made before; and, third, I do not think that the statements or the proffers on the part of counsel for the accused should go on the record of what he offers to prove, and then be supplemented by presenting papers. If he has witnesses, he should produce the witnesses; but he has no right to put on the record all this matter is this way. *The Commissioner.*—I exclude the paper. Objection sustained;

214 exception taken. *Mr. Mallett-Prevost.*—I request that the paper be marked for identification. Said paper marked Exhibit L for ident., February 19, 1890.

Mr. Mallett-Prevost.—I offer in evidence a translation of the paper marked Exhibit L for identification. Same objection, ruling and exception. Said paper marked Exhibit Ll for ident., February 19, 1890.

Mr. Mallett-Prevost.—I offer to prove that, according to the opinion of five of the principal lawyers of Havana, the Court in Havana which has taken cognizance of this matter has no jurisdiction therein; and I offer in evidence depositions duly certified to, and authenticated by the certificate of the American
215 Consul General, as required by statute. Same objection, ruling and exception. Said paper marked Exhibit K for ident., February 18, 1890.

Mr. Mallett-Prevost.—I offer in evidence a sworn translation of Exhibit K for identification. Same objection, ruling and exception. Said paper marked Exhibit Kl for ident., February 19, 1890.

Mr. Mallet-Prevost.—I offer to prove certain proceedings which have been had by the Court in Cuba in this matter relating to the appearance for Mr. Oteiza in that Court by attorney, and to the raising there of certain questions regarding the jurisdiction of that Court. I also offer to prove the decision of that Court thereon,
216 and the various appeals which have been taken from that decision. And I offer in evidence a certified copy of those proceedings, duly authenticated by the certificate of the United States Consul General as required by statute. Same objection, ruling and exception. Said paper marked Exhibit M for ident., Feb. 19, 1890.

The Commissioner.—You understand, counsellor, that the exclusion of all this proof relates simply to documentary proof, and not to oral proof? *Mr. Mallet-*

Prevost.—Yes, I understand that. I offer in evidence 217
a sworn translation of Exhibit M for identification. Same objection, ruling and exception. Said paper marked Exhibit M1 for ident., Feb. 19, 1890.

Mr. Mallet-Prevost.—I offer to prove that the Secretary-Comptroller of the Board of Debt of the Island of Cuba has not, as such official, any public funds or effects in his custody; and I offer in evidence a certificate, dated Havana, January 18, 1890, signed by the present acting Secretary, and vised by the Intendent General, and accompanied by the certificate of the United States Consul General as required by the statute. Same objection, ruling and exception. Said paper marked Exhibit R for ident., Feb. 19, 1890.

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Mr. Mallet-Prevost.—I offer in evidence a sworn translation of Exhibit R for identification. Same objection, ruling and exception. Said paper marked Exhibit R1 for ident., Feb. 19, 1890.

Mr. Olcott.—Counsel for demanding Government states that Exhibit M for ident., is not a certified copy of the record of the Court in Cuba. *Mr. Mallet-Prevost.*—I deny that statement—I offer in evidence a certified copy of the resignation of Mr. Oteiza, of the office of the Secretary of the Board of Debt, accompanied by the certificate of the United States Consul General, as required by statute. Same objection, ruling and exception.

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Mr. Mallet-Prevost.—I offer to prove that the Secretary-Comptroller, before leaving Cuba, presented his resignation as Secretary-Comptroller of the Debt; and I offer a certified copy of that resignation, accompanied by the certificate of the United States Consul General, as required by statute. Same objection, ruling and exception. Said paper marked Exhibit P for ident., Feb. 19, 1890.

220 *Mr. Mallet-Prevost.*—I offer in evidence a sworn translation of Exhibit P for identification. Same objection, ruling and exception. Said paper marked Exhibit P1 for ident., Feb. 19, 1890.

(Recess until 2:30 P. M.)

Mr. Mallet-Prevost.—I offer in evidence a copy of the Penal Code of Spain for the provinces of Cuba and Puerto Rico, purporting to have been issued by authority of the Government of Spain. I produce a sworn translation of the particular portions I desire to call attention to. *Mr. Olcott.*—Objected to. You cannot prove a foreign law in that way; it is a question of fact.
Mr. Mallet-Prevost.—As matter of fact, it is authen-
221 ticated by the Consul General, but I have not taken the trouble to translate that, as I do not think it is necessary. The provision of the Code which governs this matter reads as follows:

(Counsel reads the section of the New York Code of Procedure referred to). *Mr. Olcott.*—Counsel for demanding Government object to the offer on the part of the counsel for the accused, on the ground that no particular sections or articles of the Code are spoken of; and that it is only proper that the particular articles should be indicated. *Mr. Mallet-Prevost.*—I propose to do that. *Mr. Olcott.*—Also on the ground that the decisions of the Courts of the State of New York are to the effect that
222 foreign law is only to be introduced in evidence on being proved as a fact and that the Exhibit proposed to be introduced has not been proven in the manner required by the law and the authorities of the State of New York. Also on the ground that it is immaterial and irrelevant. And that the further objection is made that this is not the place for the trial of the case against the prisoner. Objection overruled. Exception taken. Said paper marked Exhibit D, February 19,

1890. *The Commissioner.*—I understand counsel to offer the Code in connection with this translation, in which there are specified sections. *Mr. Mallet-Prevost.*—Certainly—I offer a sworn translation of Articles 371, 401, 402, 403, 404, 405, 406, 407 and 408 of Exhibit D. Same objection, ruling and exception. Said paper marked Exhibit D[1], February 19, 1890. *Mr. Mallet-Prevost.*—I offer in evidence a copy of the Code of Criminal Procedure of Spain. I offer a translation in connection with that. Same objection, ruling and exception. *Mr. Olcott.*—I desire to add to my prior objections and to the present objection, that these exhibits are not admissible without the right of cross-examination as to whether the same are actual laws in force now. I have had to do with cases before in which foreign laws have been presented and have been proven, and in no case have I ever had an example where the mere certificate has been sufficient. Are these documents to be proved verified by the Secretary of State? A. No. Who is the man that certifies to these? An individual. In what capacity and how? Read thecertificate and see. I maintain that this is not in a shape to be presented and proven by itself. It is not certified by the Secretary of State that that is the present law in force, or anything of the kind. It is by an individual. And who is the individual? Is he a party entitled to certify to that? And at whose request is this done? It is done at the request of the defendant. And we have no translation of this, and I would like counsel for the accused to give me a copy of the translation of Exhibit D--a translation of the certificate. *Mr. Mallet-Prevost.*—I have not that. I said I did not translate that. *Mr. Olcott.*—When counsel wish to introduce in evidence foreign law, the rules are that they must prove it as a fact. That is not proving it as a fact. Suppose we show there is an amendment to this, or something of

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226 that kind. One is dated 1879, and between 1879 and now there is a wide divergence of time, and we are entitled to ask whether the law is as it stands now. Objection overruled. Exception taken. Said paper marked Exhibit E, February 19, 1890.

Mr. Mallet-Prevost.—I offer in evidence a sworn translation of the title page, and of Articles 3, 4, 7, 10, 14, 503, 637, 666, 824, 825, 828 and 831, of Exhibit E. Same objection, ruling and exception. Said paper marked Exhibit E[1], February 19, 1890.

Mr. Mallet-Prevost.—I offer in evidence a copy of the law for the settlement of the Public Debt of the Island of Cuba, and By-Laws of the Board created for that
227 purpose, of which this prisoner was Secretary. This is a law which refers to the creation of the Board of Debt, of which the prisoner was the Secretary, and to By-Laws governing that, which shows what his official duties were in the matter, and whether or not he had under his custody any public funds. It goes to show what his duties were, and what it was that was entrusted to him. Same objection. *The Commissioner.*—(After examination of said law) It strikes me that this could hardly be said to be an official edition. Exception taken.

Mr. Mallet-Provost.—I offer in evidence the Commercial Code of Spain, which purports on its face to be an official edition. *Mr. Olcott.*—I make the same objec-
228 tion, and I have another objection. In the first place, do I understand that the entire book is marked in evidence? *Mr. Mallet-Provost.*—I propose to do exactly the same as I have done with the others. I have here a translation of the sections I propose to offer. *The Commissioner.*—Of course, on the objection of the party, counsel must limit his offers to the portion of the book he offers in evidence. *Mr. Mallet-Provost.*—I can do so. *Mr. Olcott.*—I also object to this that this is not the

place for the trial of the case against the prisoner. Ob 229
jection overruled. Exception taken. Said paper marked Exhibit F, Feb. 19, 1890.

Mr. Mallet-Prevost.—I offer in evidence a sworn translation of the title page, and of Articles 64, 65, 67, and 68, of Exhibit F. Same objection, ruling and exception. Said paper marked Exhibit F[1], Feb. 19, 1890. Counsel for Spain asks that the books be left in the custody of the Court. Counsel for the prisoner states that he has no objection to counsel for Spain taking the books.

NESTOR PONCE DE LEON, called on behalf of [the 230
prisoner, being duly sworn, testifies as follows:

Direct-examination by Mr. Mallet-Prevost.

Q. You reside in New York? A. Yes.

Q. How long have you resided here? A. Twenty years.

Q. Where did you reside before that time? A. In Cuba.

Q. Were you born there? A. I was born there.

Q. Were you at any time admitted to the Spanish bar of Cuba? A. I was admitted to the bar in 1858.

Q. Did you practice your profession? A. I practiced for eleven years there.

Q. And have you, since coming to New York, kept 231
up your professional studies in Spanish law? A. Certainly.

Q. You have had constant occasion to give opinions on questions involving Spanish law? A. Yes.

Q. And it has been a specialty to which you have devoted yourself during the years you have been in New York? A. Yes.

Mr. Mallet Prevost.—I offer this witness as an expert in Spanish law.

232 *Cross-examined by Mr. Olcott:*

Q. Since you have been in the City of New York have you received from Spain regularly the papers purporting to be copies of the law? A. I keep everything for myself in my library.

Q. Pardon me, I did not ask you that. Have you received them from time to time? A. I do not understand the question.

Question repeated. A. Not the papers; the books.

Q. Every year? A. Whenever any new one is published.

Q. Whenever any new one is published you receive it here? A. Yes.

233 Q. When was the last that you received one? A. I can't make a note of it, but I can present the book. About ten or fifteen days ago.

Q. And did you keep informed as to the Penal Code of the Island of Cuba? A. Yes.

Q. What is the latest edition of that Penal Code? A. I have not a good memory for dates, but I can show to you here a copy I have in my office.

Q. Will you refer to that, and state on the next hearing in this case the latest edition that you say is the latest edition—official edition—of the Criminal Code relating to the Island of Cuba? A. Yes.

Q. Do I understand you to say that you have received copies in the city of New York of all the laws of Spain
234 that have been issued and promulgated since you left the practice in the Island of Cuba, some twenty years ago? A. I have not stated as much as that.

Q. I asked you the question? A. I have not said so.

Q. I didn't ask you that; I asked you the question. A. Please ask it once more.

Q. Have you received copies in the city of New York of all the laws of Spain that have been issued and

promulgated since you left the practice in the Island of Cuba some twenty years ago? A. I have received—— 235

Q. Yes or no? A. I can't say no, nor yes, because I have received many.

Q. Yes, you can. A. Then I say no. Because I have not received them all.

Q. Please state what is the latest edition of the Code of Commerce relating to the Kingdom of Spain and the Island of Cuba? A. As to the date I could not say; but it is in the edition of somewhere in the last five years. But I could not say the date, because I have not a good memory for dates.

Q. Was there one for Spain and one for Cuba? A. They are different. They have six articles that are different. 236

Q. I repeat my question, then, as to the Island of Cuba? A. I have the last code of the Island of Cuba.

Q. What is the date? A. I said to you that I do not remember the date.

Q. Will you inform yourself and state on the next hearing? A. I can.

Q. Will you please look at Defendant's Exhibit F, and state whether that is not the edition relating to Spain, and not to Cuba? (Exhibit F shown witness.) A. This is the edition for Spain.

Q. And not for Cuba? A. And not for Cuba.

Mr. Olcott.—I move to strike out Exhibit F. 237

Mr. Mallet Prevost.—I ask the Commissioner to reserve the decision on that point until I ask some questions.

Q. Can you state when was the last edition of the Code of Criminal Procedure as to the Island of Cuba? A. The Code of Criminal Procedure was about 1888, I think.

238 Q. Can you state, by refreshing your memory at your office or otherwise? A. Oh, yes, positively.

Q. Will you kindly do so between this and the next hearing? A. Yes.

Q. You have stated that there was a separate Code of Commerce for the Island of Cuba and Puerto Rico, I understand? A. Yes.

Q. I also understand that there is a separate Penal Code for the Island of Cuba? A. Yes, a separate Penal Code; and every Code is different for Cuba.

Q. So that, in a case of that kind, where a Code or anything applies specifically to the Island of Cuba and Puerto Rico, it is so mentioned, is it not, in the Royal Decree promulgating it? A. Yes.

239 Q. And where a law is made and promulgated, and says it is for the entire kingdom, in that case it means that it is for the entire kingdom, including Cuba and Puerto Rico? A. No.

Q. Why? A. Because Cuba is not considered in that case as a part of the Spanisn Dominion, or what is called in Spain the Province of Ultramar.

Q. When a law is stated for the kingdom, what does it apply to? A. To the Spanish Peninsula and the Canary Islands and the Ballaric Islands, unless [illegible] specified specially.

Q. Is Cuba a province of Spain, or what? A. It is a province of Spain, but yet it is not governed by the

240 same laws.

Q. Why not? A. That is a question you must ask the Spanish Government, and not me.

Q. Isn't this the case: that it is governed by general laws, unless there is a special set of laws made? A. They have special laws for everything.

Q. For everything? A. All the laws are specially made for Cuba in such a way that even the Civil Code now has been arranged for Cuba, and the Commercial

Code, that has only six articles different, yet is made a special edition for Cuba and for Puerto Rico, and all the other colonies. 241

Direct-examination resumed:

Q. Mr. de Leon, you have stated that that Code which is marked Exhibit F, is the Code for Spain (Exhibit F shown witness). A. Yes.

Q. You have stated that there is a different Code for Cuba A. Yes.

Q. You have stated that the Cuban Code differs from the Spanish Code in six articles? A. Six or seven at the utmost; it is not more.

Q. Will you please look at Article 64 of that Code, and at Articles 65, 67 and 68, and state whether or not those articles are the same in the Code for the Island of Cuba? *Mr. Olcott.*—Objected to on the ground that the best evidence is the Code itself, and that is not the way to prove the law, and as incompetent and irrelevant; objection overruled; exception taken. 242

A. I cannot possibly answer.

Q. You cannot possibly answer it? A. No. I have the Code for Cuba, and I can examine and see if the difference is there. I do not think it is, but I cannot Ob. or positively that this—— *Mr. Olcott.*—I move to strike out the last sentence; motion granted.

Q. Will you look at Exhibit E, and state whether or not that is the last official edition of that Code that has been published (Exhibit E shown witness)? A. That is the one. 243

Q. Is that the Code of Criminal Procedure which is now in force in Cuba? A. Yes.

Q. And would that Code be admissible in the Courts of Cuba in order to prove what the law of Criminal Procedure is? A. Yes.

Q. Look at Exhibit D and state whether or not that

244 is the latest official edition of the Penal Code for the Island of Cuba? (Exhibit D shown witness.) *Mr. Olcott.*—He has said about that that he could not say, and that he would refresh his memory. I asked him about that. Objection overruled. A. That is the last edition, in my opinion.

Q. That is the last edition? A. Yes.

Q. (Paper shown witness.) Please examine this pamphlet and state what it is? A. Constitution of the Spanish Monarchy, promulgated in the Island of Cuba on the first of May, 1881; official edition, printed by the Government in the printing office of the Government. That is the way in which the official laws are
245 printed there. They are first published in the *Gazetta*, as specified here, and then they are printed in this way. It is the official gazette.

Q. Is that the Spanish Constitution which is now in force in the Island of Cuba? A. Yes.

Q. And would that pamphlet be admitted in the tribunals of Cuba for the purpose of proving that Spanish Constitution there? A. Undoubtedly; because it has the official seal, and it is printed in the office of the *Gazetta*. *Mr. Mallet-Prevost.*—I offer this pamphlet in evidence. Objected to as irrelevant and immater[illegible] Objection overruled. Exception taken. Said pamphl[illegible] marked Exhibit C, Feb. 19, 1890.

Q. (Paper shown witness.) Will you examine that
246 pamphlet and state what it is? A. The law for the settlement of the Public Debt of the Island of Cuba, and by-laws for the Board created by virtue of said law of the 7th of July, 1882.

Q. Is that law now in force in the Island of Cuba? A. That is now in force in the Island of Cuba.

Q. Is that an official edition of that law? A. Official edition; published by the *Gazetta*, and with the seal of the Government here.

Q. Would that be admissible in the Courts of Cuba for the purpose of proving the law which it contains? A. Yes. *Mr. Mallet-Prevost.*—I offer it in evidence. *Mr. Olcott.*—I propose to cross examine him. *The Commissioner* (to witness.)—There does not appear to be any statement on this that itis an official edition. *Witness.*—It is the official edition. I cansay that about it, because here is the official seal. 247

Cross-examined by Mr. Olcott:

Q. How do you know, and how can you state, that that is the law as at present in force? A. I will state—that I will state that that is the official law now.

Q. How do you know it? It is dated in 1882? A. I would say only that—that it was dated in 1882. I never paid attention to this business of the by-laws of the public debt. *Mr. Olcott.*—I move to strike out the testimony of the witness to the effect that it is the present law. *The Commissioner.*—The witness corrected himself—that he knows of no law subsequent to that. *Mr. Olcott.*—I make the same motion with regard to the edition of 1879. Motion denied. Exception taken. *Mr. Mallet-Prevost.*—I offer the pamphlet in evidence. Objected to as irrelevant and immaterial. Objection overruled. Exception taken. Said pamphlet marked Exhibit B, February 17, 1890. 248

Direct-examination resumed:

Q. (Paper shown witness.) Will you examine this pamphlet, and state what it is? A. Instruction about the attributions and relations of the general and central office of Finances of the Island of Cuba. 249

Q. Is that an official edition of that law? A. That is the official edition of the year 1886 of this book.

Q. Would that pamphlet be admissible in the Courts of Cuba to prove that law? A. Yes. *Mr. Mallet-Pre-*

250 *vost.*—I offer it in evidence. *Mr. Olcott.*—I claim the right to cross examine him.

Cross-examined by Mr. Olcott:

Q. Do you state this is the present law? A. I cannot state that, for I don't know if there is anything changed from 1886 to this date.

Q. Since the dates of these various exhibits, one stated to be published in 1879, another in 1882, another in 1886, another in 1888, have you been in Havana practicing. A. No.

Q. Then you cannot state of your own knowledge that those laws are, or that those papers, those proposed exhibits are, the actual law at the present time? A. I
251 cannot.

Mr. Olcott—I move to strike out the evidence of the the witness, as he can only state that those were papers showing the law at the times purporting to be the dates of the issuance. That the witness is not in a position, and has not qualified himself, to testify as to the present law, in that he is not a practicing lawyer of all those Courts at the present time. He has not shown himself to be competent as to the present law, in so far as those papers are concerned, as to the dates they were issued, that is one thing; but that the events contained, the occurrences set forth, in the docket of proceedings that comes before the Court, are of the date of December, 1889; and therefore these are not only immaterial and
252 irrelevant, but have not been properly proven. Motion denied. Exception taken. Said paper marked Exhibit A, February 19, 1890. (It is agreed that the copy of the Spanish Treaty heretofore used can be referred to by counsel.)

Direct-examination resumed:

Q. Are you familiar with a Royal order issued by the Department of Foreign Affairs on September 2, 1881?

Mr. Olcott.—Objected to as immaterial and irrelevant, 253
in the first place. In the second place, I do not understand that that is the way to examine the witness. If it is proposed to introduce that in evidence, it has got to be introduced in the regular way. Question withdrawn.

Q. (Paper shown witness.) Please examine the paper which I hand you, and state whether or not that is an authentic copy of a Royal Decree issued by the Ministry of the Ultramar of Spain on September 2, 1881?

Mr. Olcott.—Objected to. The witness is not competent to give his opinion on that. Your Honor is the one to pass on that. *The Commissioner.*—What do you mean by authentic copy?

Q. Whether that is a copy of the decree which would 254
be admitted as evidence in the tribunals of Cuba to prove that decree?

Mr. Olcott.—Objected to on the ground that the certificate of the Consul is a prerequisite for that, as it is alleged to be a copy of a record. Objection overruled; exception taken. *Mr. Olcott.*—I claim the right to cross-examine the witness.

Cross-examined by Mr. Olcott:

Q. Did you ever see any of those persons purporting to sign that paper? A. I know the signatures.

Q. Did you ever see those persons sign? A. No.

Q. None of them? A. No. But I know the seals and 255
signatures of those two persons, Alejandro Nunes and Joaquin Lancis.

Q. What part of the document have they signed? A. They have signed the certification; the authentication of the signature of the Intendent General, Mr. Urzais, and Mr. Aniceto Suarez Barcena.

Q. Then you don't know anything about that document except what is over the signature of the last two

256 parties? A. I know that it is the way according to Spanish law documents are certified.

Q. Outside of that you have no knowledge of that at all? A. Of the document itself?

Q. Of the document itself? A. I have read it a thousand times—I don't know how many times I have read it.

Q. I did not ask you that. Then, when you state it is an authentic copy, you only state from the fact of the signatures of Messrs. Lancis and Nunez being there? A. Yes, because they do certify.

Q. That is enough. A. I want to give my answer, not your answer.

257 Q. But I do not ask more than that, and I ask you yes or no. A. But I must say why. *The Commissioner.*—Answer yes or no, if you can.

Witness.—I can not answer yes or no.

Question repeated. Then, when you state it is an authentic copy, you only state from the fact of the signatures of Messrs. Lancis and Nunez being there? A. I take it from that, and from the fact of seeing the seal of the Intendente on the document.

Q. Were you there when the seal was put on? A. No, but I know the seal; I have seen it on many.

Q. I asked you whether you were there when the seal was put on? A. I was not there.

Q. Were you there when the signatures of the per-
258 sons signing were appended? A. No.

Q. Must you not necessarily rely upon the certificate of the notary, Mr. Lancis and Mr. Nunez? A. I do rely on that.

Q. Simply on that? A. Not simply on that, but on the seal of the Intendente.

Q. But you were not there when it was appended? A. No.

Q. And you have not been in Cuba in the last twenty

years? A. I have been in Cuba five times during the last twenty years. 259

Q. Were you there when this purports to be signed, in January, 1890? A. No.

Q. Then isn't it a fact that you have to rely, as to that matter, upon the certificate of Mr. Lancis and Mr. Nunez—on their certificate? A. Undoubtedly.

Mr. Mallet-Prevost.—I offer the paper in evidence. *Mr. Olcott.*—Objected to on the ground that it is not proven. Objection overruled; exception taken. Said paper marked Exhibit N., Feb. 19, 1890.

Mr. Mallet-Prevost.—I offer in evidence a sworn translation of Exhibits N, A, B and C. Same objection, ruling and exception. Said papers are marked Exhibits A^1, B^1, C^1, and N^1, February 19, 1890. 260

The Commissioner.—I understand that these papers are offered as bearing upon the question of the nature of the offense committed? *Mr. Mallet-Prevost.*—Yes, sir, and of the jurisdiction—both. *Mr. Olcott* moves for an adjournment. Hearing adjourned to Thursday, February 20, 1890, at 2 o'clock P. M.

NEW YORK, February 20, 1890, 2 o'clock, P. M.

Present—The COMMISSIONER. Messrs. OLCOTT and GONZALES for demanding Government. Mr. MALLETT-PREVOST for the prisoner. The prisoner is produced by the U. S. Deputy Marshal. 261

Mr. Mallet-Prevost—I offer in evidence a dictionary of legislation and jurisprudence, by Don Epifanio Sanchez de Las Mas, a lawyer of the Illustrious College of Grenada, and I offer with it a sworn translation of the two words "malversacion"—malversation—and "peculado"—peculation. *Mr. Olcott*—Objected to on the ground that the Commissioner is not sitting on

262 definitions; that it is immaterial and irrelevant; that the treaty speaks for itself, in that not only is the text of the treaty in the English language, but that the treaty is accompanied side by side, in the copy already before the Court officially, with the text in the Spanish language; and that, therefore, the Governments of the United States and Spain have agreed to fixed, defined and arbitrary definitions and significations of the words contained in the text both in the English and in the Spanish language. The word "peculado" is not contained in this at all; the word "malversacion" is contained; the treaty has printed side by side the text in English and the text in Spanish. I maintain that, al-
263 though my friend were to bring before your Honor all the dictionaries in the world and all the experts in the world, there is the law laid down *literatim et verbatim*. There is the Spanish, and there is the English. Your Honor will see what I mean: that here is the text in the English side by side with the text in Spanish. The treaty makes the text the law for itself. Therefore all you have to do is simply to say, here is the English on one side, and here is what is agreed on both sides to be the translation of the English into Spanish and the translation of the Spanish into English. Therefore I say that these two nations could agree to put in any arbitrary word here in either language. Objection overruled. Exception taken. It is agreed that the books themselves
264 are not to go in evidence, but only the translations of the portions received. Translation marked Exhibit G, February 20, 1890.

Mr. Mallet Prevost.—I offer in evidence a dictionary of legislation and jurisprudence, by Mr. Joaquin Eschrichie, Hon. Judge of the Court of Madrid, and I offer with that a sworn translation of the words "malversacion" and "peculado." Same objection, ruling and exception.

Mr. Olcott.—I ask that the entire definition of that be put in. Request granted. (Said translation, when produced, is to be marked Exhibit H.) 265

Mr. Mallet-Prevost.—I will offer the whole of that, and will take time to translate the remainder. *Mr. Olcott.*—Certainly. I make the motion only as to "peculado" and "malversacion."

Mr. Mallet-Prevost.—I offer a dictionary of the Spanish language, by the Royal Academy of Spain; and a sworn translation of the words "malversacion," "malversa" and "peculado." *Mr. Olcott.*—I make the same objection, that the language of the treaty has been fixed both as to the text in the Spanish and in the English language; and that, therefore, any testimony looking to vary or alter such definition is immaterial and irrelevant. Objection overruled; exception taken. Translation marked "Exhibit I, Feb. 20, 1899." *Mr. Olcott.*—I ask your Honor to have a note made on the record that these various exhibits are admitted provided that they are shown to be material and relevant hereafter. *The Commissioner.*—Certainly. *Mr. Mallet-Prevost.*—I have no objection to that. *The Commissioner.*—While it does not appear that some of the exhibits relating to definitions are material, yet, in view of the decisions of the Supreme Court of the United States, in Benson *vs.* McMahon, and the stipulation by counsel that he will show their materiality subsequently, I will allow the papers to go in evidence. 266 267

NESTOR PONCE DE LEON'S *direct-examination continued by Mr. Mallet-Prevost:*

Q. At the hearing yesterday you were requested by the Counsel for Spain to examine various codes at your office, among others the Commercial Code of Spain for the Island of Cuba. Have you done so? A. Yes.

268 Q. (Book shown witness.) What is that book which you now have in your hand? A. The Code of Commerce for the Island of Cuba.

Q. Have you examined the articles in that code which correspond to Articles 67 and 68 of the Commercial Code in evidence and marked Exhibit F? A. (Witness looks at said books.) They are exactly equal.

Q. Then the articles which were offered in evidence yesterday, 67 and 68, of Exhibit F, are laws in force in the Island of Cuba? A. Yes.

Mr. Olcott.—One minute. I do not think that is proper. He cannot draw that conclusion, when he has merely compared that with the book; and I object to
269 the form of the question. He has not stated that this is the present code in force there.

Q. Is that code in force in the Island of Cuba? A. This code is in force in the Island of Cuba, since the 28th day of January, 1888.

Cross-examination by Mr. Olcott:

Q. You were asked yesterday to inform yourself as to certain dates. Have you since the last sitting so informed yourself, and are you ready now to furnish the dates as to which you were questioned on your examination yesterday? A. Yes.

Q. Please state? A. The present Code of Commerce was in force in the Island of Cuba, by Royal decree of
270 January 28, 1886. The present Code of Criminal Proceedure was promulgated by Royal decree of October 19, 1888; and it was published in Havana, November 26, 1888.

Q. That is the present Code of Criminal Proceedure? A. Yes. The Penal Code was promulgated by Royal decree of May 23, 1879. And the three codes are actually in force at present in Cuba?

Q. How do you know it was published in the *Gaeztta*

that date? A. Because I find it in my Code; it is in the front; it says it was. 271

Q. You have spoken about a Royal decree or order. What was the date of that? A. That I did not look for; it was 1881 somewhere; but I did not look for that, because we had it here before that.

Q. Did you read the docketed proceedings in this case, Exhibit 3? A. I don't know which is Exhibit 3.

Q. That came from Cuba? A. The large one?

Q. The large one. A. I have read it.

Q. Do you remember seeing mention made or Article 401 of the Code in that? A. You ask me a question like that——Objected to as not cross-examination; objection overruled. 272

Q. Please look at page 22 of the docket of proceedings in Cuba, Exhibit 3, and state whether the Article 401 that is mentioned there is the Article 401 of the Criminal Code that has been introduced here and marked Exhibit D, February 19, 1890? It that the Article 401 referred to? (Said Exhibit shown witness.) A. That is the one.

Q. Then, when the docket of proceedings uses the following words, "A malversation of public funds, punishable under No. 4 of Article 401 of the Penal Code is therefore fully proven." A. (Interrupting) I find it here.

Q. I say, when the docket uses those words, and refers to Article 401, the Article 401 of the Criminal Code to which reference is made is Article 401 of Exhibit D of February 19, 1890? A. Yes. 273

Q. When you stated yesterday that you were acquainted with Exhibit N of February 19, 1890, and that you had read it many times, will you please state how you read it, and in what way it came into your hands? (Said exhibit shown witness.) A. That is more than I can tell—the way in which any book came into my hands.

274 Q. Where did you first read it? A. That I do not know.

Q. Is it not the fact that the first time you read this was since the commencement of these proceedings? A. Oh, no I read it before in the Havana papers.

Q. The Havana papers? A. Yes.

Q, How long before these proceedings? A. I cannot say.

Q. Approximately? A. Some years ago.

Q. Some years ago? A. Yes.

Q. Where did you read it? In the city of New York? A. That is also more than I can tell.

Q. What year was it in? A. If I knew what year it was, I would be able to say to you how many years
275 from now.

Q. You said you had read it, yesterday, a thousand times? A. Yes, I read it many times. That, you know, is a little Russian.

Q. Pardon me, you stated you had read it many times—a thousand times—and I think you said even more than that. If you read it as often as that, you must certainly know it pretty well? A. But when I have read it more is lately.

Q. When did you first read it? What year was it in? A. I have already answered you that I cannot say.

Q. Was it last year? A. Oh, no; it was long before that.

276 Q. Was it the year before last? A. I cannot say. If you ask me in what year I had the honor of making your acquaintance, I would not be able to say to you that.

Q. I hope I made such an impression on you that you could say that? A. I cannot say in which year.

Q. But, if you have read it so many times, you must know pretty nearly when you first read it? A. I cannot tell.

Q. You cannot remember when you first read it? A. 277
Absolutely.

Q. What first directed your attention to it so that you remember it? A. As a lawyer, I always like to read everything in the law which I find; and my attention was called to the new form of procedure established—which I considered new, and which was not new.

Q. Have you read every decree that has been issued by the reigning monarch of Spain since you have been here in New York? A. No.

Q. They are issued from year to year, are they not? A. No, they are issued in the Gazette there, and I read them very often.

Q. In each year there are royal orders? A. Yes.

Q. Signed by the reigning monarch of Spain? A. 278
Yes.

Q. Do you remember the date of this? A. Of which one?

Q. Of this royal order, Exhibit N? A. I believe I have heard it was 1881.

Q. I ask you whether you remember the date of it? A. No.

Q. You do not? A. No.

Q. Have you read it a thousand times, as you stated yesterday? A. Maybe not a thousand exactly.

Q. About how many times do you think you have read it? A. Well, I have told you already that I am not a man at numbers. 279

Q. But yesterday you were. I want to find out what you are to-day. A. You know perfectly well that when we say in Spanish, mille times, that means a thousand times, and I always translate into English.

Q. When one says a thousand times in Spanish it is figuratively speaking and not strictly? A. Yes.

Q. Was it not shown to you first by the counsel for the prisoner in this case? A. Oh, no.

280 Q. He did show it to you, did he not? A. Yes, he did.

Q. And asked you to read it? A. No, because I have seen it before from Havana.

Q. Did he show it to you? A. Yes.

Q. Did he ask you to read it? A. Yes.

Mr. Mallet-Prevost.—Here is a copy which I have lately received (counsel producing a paper). I do not offer it in evidence, because I have no one to identify it; but I hand it to the other side and ask them whether they are willing that it shall go in evidence. I do it simply in order that we may understand this hereafter. These are the lists, printed copies, and I have a
281 translation. *Mr. Olcott.*—I do not know that it is correct. I object to it simply that it is not proven in the proper way, and that it is immaterial and irrelevant; that the case at bar is not one of forgery; that the record shows distinctly the possession by the accused of a book containing Series F, with numbers from 16,001 to 16,500, a delivery of such coupons to Andrade and Valdes and Remus, the collection of the same by the same persons of the Spanish Bank, and the delivery of the proceeds of the same to the prisoner. And, further, that there is no evidence that the paper is an official document.

Mr. Mallet-Prevost.—The prisoner desires to make a statement to the Court. (Counsel produces a paper).
282 *The Commissioner.*—Not under oath. *Mr. Mallett-Prevost.*—Not under oath. *Mr. Olcott.*—Objected to. *Mr. Mallet-Prevost.*—In accordance with the provisions of Sections 196 and 198 of the Code of Criminal Procedure of the State of New York. *Mr. Olcottt.*—In the first place, I ask whether your Honor thinks that that applies to extradition proceedings. This is quite irregular, because this is supposed to be done at the close of the case of the prosecution. They have not done

that at all. They have chosen to allow other witnesses to go on and be examined. *Mr. Mallett-Prevost.*—The defendant hereby waives any benefits which may be secured to him by Section 197 of the Code. 283

The Commissioner.—After consulting the Code, I find that the practice in this State makes it mandatory upon the magistrate to inform the defendant of his right to make a statement, when the case on the part of the people is closed. Any objection, therefore, that there might be to receiving this paper at the present time, if urged by the prosecuting Government, I think should be disregarded, provided this is a case where the magistrate's duties come within this section of the Code. As I understand the authorities, the defendant has a right to be heard; and, under this section of the Code, Section 196, I am of the opinion that he has a right, under the circumstances, to make the statement, if he insists upon it, at the present time, although not under oath; and therefore I will hear it. It must be taken in writing. *Mr. Mallett-Prevost.*—I present it in writing. *Mr. Olcott.*—Counsel for Spain insists that the strict letter of the statute of the State of New York must be followed, if the Commissioner decides to take the statement of the prisoner. I insist upon the formula of examination as stated by the Code. 284

By the Commissioner (to the prisoner through his counsel): 285

Q. What is your name? A. Luis de Oteiza y Cortes.

Q. Age? A. Thirty-seven years of age.

Q. Where were you born? A. Madrid.

Q. Where do you reside, and how long have you resided there? A. Madrid is my residence, but I have passed the last ten years in Cuba?

Q. What is your business or profession? A. I am a

286 lawyer, and have for fifteen years been in the employ of the Government of Spain.

Q. Give me any explanation you think proper of the circumstances appearing in the testimony against you, and state any facts which you think will tend to your exculpation. *Mr. Mallet-Prevost.*—The defendant thereupon, through his counsel, makes the following statement. *Mr. Olcott.*—To all which questions counsel for Spain makes objection. I ask to reserve the objections to the paper. I ask for an adjournment. *Mr. Mallet-Prevost* states that he is willing that the other side should have time to prepare for the summing up, but that the evidence ought to be closed to-day. The Commissioner adjourns the hearing to Monday,
287 February 24, 1890, at 11 o'clock, A.M.

NEW YORK, February 24, 1890, 11 o'clock A. M.

Present—The COMMISSIONER, Mr. OLCOTT, for demanding Government. Mr. MALLET-PREVOST, for the prisoner. The prisoner is produced by the U. S. Deputy Marshal.

Mr. Olcott.—On the last occasion I understood that your Honor had decided that this question of the statement of the prisoner was to be discussed to-day; and I find, on investigating the subject somewhat, that the
288 prisoner has not only presented such statement before your Honor, but, without authority in that regard, he has chosen in some way or other to communicate it to the public press, and it appeared in one of the newspapers of this city. Now, I do not say anything against my learned friend on the other side, nor do I press that as a matter of contempt on the part of the prisoner or on the part of his counsel; but I do say, and I insist again on that which your Honor commenced to observe,

and that is that these questions shall be propounded to 289
the prisoner, and the prisoner shall make answer to them directly. I do not think, in other words, that the channel or conduit of transmission through a written paper was ever allowed, or meant to be allowed, in behalf of any prisoner in any matter. In the first place, it would be very easy for a party to put that in a paper which would come before the Court, perhaps, as a written statement, which inadvertently would go upon the record. I maintain that there is more control over that which is by word of mouth than over that which is in writing. In the second place, that may occur which has occurred in this instance. The prisoner in his so-called statement, has seen fit to annex to it paper or papers. If his state- 290
ment were presented in that way, and allowed to be presented as a statement, I maintain that it is not the statement provided for by the Code; and I may here say that I think it is proper, under the practice as it exists, to allow a verbal statement to be made under the formula of questions set forth in the Criminal Code. I have satisfied myself in that regard. So I stated that I desired to look and compare the decision of Judge Blatchford in the Farez case; and I think even then the law was in such a position as to permit it, although it was not in the form in which it now stands in the Criminal Code. So I maintain that your Honor must put these questions, question by question, and the state-
ment must be taken down and reduced to writing by the 291
Commissioner. And I have in that regard, an authority. I had no authority then, but I took it for granted that that should be the case. The decision is that the Court must administer the specific questions set forth in the Code, and must take the statement in writing as the questions are propounded. There is a paper annexed to this paper, which would in a measure be produced and put on the record. I said the other day

292 that if I thought it were material or relevant to the case, and I had the proper lights on the subject, I would not hesitate to admit that which belongs to us, so to speak, and which, if it be proper, would be a Government form or Government document. I doubt the statement of counsel when he says those were sold in stationers' shops. *Mr. Mallet-Provost.*—So I understand ; but I do not say so under oath. *Mr. Olcott.*—Pardon me, that is a suggestion—I do not make any point of that. (Counsel here cited a number of authorities.) I insist upon the formula prescribed by the statute.

The Commisioner.—You will have to proceed as the counsel for the prosecution insists that it is his right to
293 demand, namely, that the statute be literally complied with. At the last meeting the prisoner was asked his name, his age, the place of his birth, his residence, and his occupation, as well as whether he had any explanation to make of the circumstances appearing in the testimony. Counsel for prosecution now insists that a preliminary question should be put to the prisoner, namely, as to whether he understands the English language and what is his native language. It appears already that he was born in Madrid, and has lived there most of his life, and, of course, speaks the Spanish language. I will ask the prisoner whether he understands the English language. (By consent of counsel for the prosecution, the question propounded to the
294 witness is translated from English into Spanish through the counsel for prisoner, who acts as interpreter.) The prisoner (through interpreter). No.

The Commissioner. (Through counsel for prisoner as interpreter).—What is your name ? *The Prisoner.*—Luis de Oteiza y Cortes.

The Commissioner.—Your age ? *The Prisoner.*—Thirty-seven years.

The Commissioner.—Where were you born? *The Prisoner.*—In Madrid. 295

The Commissioner.—Where do you reside, and how long have you resided there? *The Prisoner.*—Always in Madrid, excepting the last ten years in Havana—five years in Paris.

The Commissioner.—What is your business and occupation? *The Prisoner.*—I am a lawyer. I have always practiced my profession as a lawyer, as an employee, and have engaged in private speculations.

The Commissioner.—Give any explanation you may think proper of the circumstances appearing in the testimony against you; and if you wish to state any facts which you think will tend to your exculpation 296
you are at liberty to do so. By the practice of this State, it is my duty to inform you that it is your right to make a statement in relation to the charges that are made against you. Do you know what the charge made against you is? *The Prisoner.*—I know them. You have explained them to me. Officially they have not been read to me. I know them.

The Commissioner.—The Commissioner rules that the formal written statement which was offered at the last meeting, the question of the admission of which was reserved to be passed upon after argument by counsel, cannot be admitted as a formal document. The right of the prisoner to the use of this document as a
memorandum to refresh his memory can be passed upon 297
from time to time as the case requires. Exception taken.

The Commissioner.—(To the prisoner). It is further my duty to state to you that this opportunity for a statement is designed to enable you, if you see fit, to answer the charge, and to explain the facts which have been alleged against you. You are at liberty to waive making any statement. It is purely optional with you whether you will do so. And your waiver, if you

298 choose to waive making any statement, could not be used against you, if your trial were to take place within this State. *The Prisoner.*—Inasmuch as I am unacquainted with the English language, I had prepared a statement in Spanish, which it was my intention that you should translate and present to the Court. As I do not understand the English, I do not know what may have been decided here at this proceeding with respect to that. Counsel for prisoner translates to the prisoner the ruling of the Commissioner.

The Prisoner.—I shall then explain it more briefly, because the explanation, being oral--it is impossible for me to give it in as orderly a manner as though it were written, and I do not desire to consume the time
299 of the Court. *The Commissioner.*—You may ask him if this is the statement that he prepared? (Said paper shown prisoner). *Mr. Olcott.*—Objected to on the ground that the prisoner has no right to hand in a written statement; second, that it is in the English language, and he has just stated that he is not conversant with the English language. The prisoner, under Article 196 and the following Articles, is not entitled to hand in any written statement whatsoever. *The Commissioner.*—If the original is in Spanish, let that also be marked. *Mr. Mallet-Prevost.*—There are certain things in the original which are not in this.

The Commissioner.—Do I understand Mr. Prevost to
300 state that this statement in English has not been read over to the prisoner as it at present appears? *Mr. Mallett Prevost.*—The statement in English is a translation, almost literal, made by myself, of a statement which has been furnished me in Spanish by the prisoner. Some portions of that statement I have not translated, because I considered—

The Commissioner.—I repeat the question. *Mr. Mallett Prevost.*—As it at present appears, no sir.

The Commissioner.—Let it so appear on the record. 301

Mr. Mallet Prevost.—I should like to make this statement, and have it appear on the record also. No, sir; but this statement is almost a literal translation, with the exception of a few phrases which I have omitted from the statement furnished me in writing and in Spanish by the prisoner. *The Commissioner.*—The only object of these questions is to identify this paper which has been referred to heretofore in the examination. Let the paper be marked for identification, namely, the paper by me supposed to be a translation of a paper in Spanish. On the statement of the prisoner's counsel, it is clearly not admissible. Nevertheless, let it be marked, as I have stated, for identification, and for an explanation of the record which has already been 302 made. It is not only admissible in evidence, or in lieu of the statement which the statute provides, but this paper in English is not admissible for any purpose, that I can see, not even for the purpose of refreshing the memory of the prisoner, and it cannot be used for any such purpose. The prisoner will proceed with his oral statement. Said paper marked Exhibit S for identification, February 24, 1890.

The Prisoner.—I ask permission to make use of the written statement which I have prepared, in order that I may be able to make my declaration in a more orderly manner.

The Commissioner.—I suppose he refers to the Spanish notes? *Mr. Mallet Prevost.*—Yes, sir. 303

The Commissioner.—What purpose does he wish to use them for? *Mr. Mallett Prevost.*—In order that he may be able to make the statement in an orderly manner. I suppose that might be translated liberally: "To refresh his memory."

Mr. Olcott.—Counsel for Spain objects to such a use of any paper, on the ground that, in making the state-

304 mont as to a crime alleged by the demanding government, the prisoner should need no paper to proceed in an orderly manner; that the prisoner has stated that he is informed of the case ; and that the statute simply states that he can give any explanation he may think proper of the circumstances appearing in the testimony against him, and may state any facts which he may think may tend to his exculpation ; and that it is not material or relevant as to proceeding in an orderly manner, as far as such statement permitted by the Penal Code is concerned.

The Commissioner.—Let the prisoner proceed as far as possible without the use of any written statement. He may use the paper to refresh his memory as to dates,
305 if he chooses, and such details, but should not use it as the basis for an arrangement of his narration. Please state to him that he need not present it in an orderly manner, but just as it occurs to him. *The Prisoner.*—Mr. Commissioner, I will begin by stating a few antecedents— *Mr. Olcott.*—I object, on the ground that the prisoner has no right to sum up on the evidence, or to state any antecedents at all. He should be instructed that he has simply the right to make a statement of the circumstances appearing in the testimony against him, and to state any facts which he may think may tend to his exculpation.

The Commissioner.—I think the statute clearly con-
306 templates, in allowing the prisoner to make this statement, that the magistrate shall be liberal in his interpretation of the subject of confining the prisoner strictly to any details. We will take the statement just as the prisoner chooses to give it ; but I will remind the prisoner that he must not go into matters in relation to his connection with the Government, or the Government's treatment of him, that have no direct bearing upon this case. Administer this caution to the prisoner, and then

let him proceed with the statement. The statute allows 307
him to make a statement in relation to the charges, and to explain the facts, and provides that the prisoner shall be allowed to give any explanation he may think proper, and state any facts which he thinks will tend to his exculpation ; therefore the only caution that I will administer to the prisoner is, as I stated, that the explanation must relate to the charges against him. *Mr. Mallet Prevost* translates the ruling of the Commissioner to the prisoner. *Mr. Olcott*, Counsel for Spain, with proper respect for the Commissioner, excepts to the words "as the prisoner chooses to make it." *The Prisoner.*—I entered upon my duties as Secretary of the Board of Debt the 8th or 7th of October, I don't remember which day. *Mr. Olcott.*—What year? *Mr. Mallet Prevost.* He has not said. 308

The Prisoner.–And I began to prepare myself for the discharge of those duties, making use of the knowledge which I had. I found that there were four coupons of the Debt which were due, and which had not been paid; and that a question was pending as to the manner of paying coupons that became payable prior to September of 1886. The public, when they saw a new chief in office, constantly called upon me, in order to try to prevail upon me to make the payments. In financial circles and in the press the idea was discussed as to my making the payment referred to with reference to the Royal Order which had been dictated for 309
that case—because I had been the legal adviser of the government for many years, and was well acquainted with those laws. When I studied that Royal Order I found that it established two distinct cases. The first was that the coupons which had been acquired on the Exchange through brokers should be paid always when the party interested should present the certificate of the broker through whom they were required. This dis-

310 position or order is founded upon the laws relating to payments to bearer, according to which, values payable to bearer negotiable in the exchange are not subject to be claimed by third parties. They cannot be impugned as bad or false, because they have not been proclaimed or denounced in the Exchange. The second case was, that if the parties interested had not acquired them in the Exchange (because they are not bound to acquire them in that way) in default of the certificate of the broker, they should declare the origin or the place from which said values proceeded. The chief, my predecessor, following out the rule or the opinion of the then Intendent, had interpreted that Royal Order in the sense that both requirements were necessary in either case.

311 I studied all the proceedings relating to the matter, and I found, or it was my opinion, that that was not what the Royal Order meant, but that the two cases had to be separated and treated disjunctively, that is to say, either the one or the other. This was logic—because he who has purchased the coupons in the Exchange cannot know the operation whereby they issued from the Treasury, and, on the contrary, he who can declare from which operation those coupons emanated, proves, or it is a sign, that he cannot have acquired them in the Exchange. This was a clear legal question. But the contrary opinion, which had before been followed, was applied. I think that it may have been an excuse, be-

312 cause there were no funds with which to pay them, and for the purpose of attending to other obligations which the intendent might think preferable. When, however, I took possession, I wished to apply the law as it was ordered. I explained the case to the then Intendent. I told him that there was nothing else to be done but to open the payment for the coupons which were due, on account of the credit of the State, stating that the debt could not be repudiated, and that the coupons prior to

the year 1886 should also be paid whenever the holders complied with either one of the requisites as commanded by the Royal Order. Thus ordered the Intendent, and payment of coupons was begun. As a number of coupons were opened (that means, as a number of payments were begun to be made), the payments were, of course, heavier than they had theretofore been. The 5th day of December another Intendent arrived ; and upon my explaining to him the situation of the debt, and the two rules which had been followed in the payment of coupons, he told me that he had but few funds with which to pay the salaries of the employees, and that he was of opinion that they should not be paid except according to the prior rule. I told him that every time that a new Intendent came here, the inferior officers or subalterns explained to him our opinion in the law, but that, if they thought differently, why, the order would, of course, be carried out. Consequently, from that day, if he was of opinion that they should not be paid, why, no more would be paid. That, nevertheless, it was not my fault, if prior to his arrival there had been employed in this manner $200,000, which heregretted not having at his disposal for other operations. He told me to present that opinion in writing, as a consequence of the Royal Order. I did this. He did not declare himself to be satisfied. The opinion which I had presented was passed to the Chief, my predecessor. This did not please me, because it was a question which, as superior Chief, he ought to have determined. On this account, and also for other reasons which are foreign to this matter, and which I do not mention owing to the caution which I have received from the Commissioner, I noticed from the very beginning, from the arrival of said Intendent that my manner of procedure was not satisfactory. On the contrary, with reference to the twelve preceding Intendents, for all of whom I

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316 have been the chief of confidence—confidential chief. I determined, therefore, to resign my position. I am of a very active character; and as soon as I finished having the discussion with the Intendent, I determined to embark for Europe, in order to go to the Ministry for the purpose of explaining these questions. I examined the list of steamers; and as on the following day a steamer left, I took advantage, and prepared my resignation, which I sent to the Intendent. I prepared my baggage, and I embarked the next morning. This haste, which it appears has attracted attention, is not the first time that it has been practiced by me. In the year 1888. the 28th of April, after a conference with the Captain-General, I left at four o'clock in the afternoon, and the

317 following day at eleven o'clock in the morning I embarked in the same steamer "Olivette" by the same route for the United States; I remained one day in New York, and continued to Madrid. It happens that it was even the same steamer. When I arrived in New York I examined the list of steamers leaving for Europe. Inasmuch as the following day was a holiday, and the "Adriatic" was to leave, which was the same in which I took passage in the year 1888, at which time I had difficulty owing to being unacquainted with the English language, I determined to await until the French steamer sailed, so that I might make use of the French language with which I am acquainted. I was arrested by the

318 police when I did not expect it; and the proof of it is that I have traveled in all parts with a passport from the Government in my own name, and without attempting to hide anything. I was then surprised to find that I was charged with having taken some bonds which it was alleged was among my baggage. Subsequently I have ascertained by means of the newspapers, and the explanations which you have given me with respect to the charges here presented, that I have been accused of

having taken five hundred Treasury bonds, and of having paid $100,000 of coupons. I have meditated as to what this could be, and the only explanation which I can find is the following: It may have been that some interested parties or inferior employees have surprised me with some crime committed by them—which will be very unfortunate for me as administrative chief. For even though I may not be responsible criminally, I should be responsible administratively. This kind of responsibility is determined in a proceeding had by the Special Jurisdiction of Finance, under the guidance or inspection of the Tribunal of Accounts. Because the cases may be very different. That is the place where it is decided or determined whether there be a crime, and what part the employees may have had therein, in order to distinguish or to separate those which must be sent to the Courts from those to whom are applied only the correctional or administrative discipline. When I entered my office, I made an examination of all the values of State which were in the general treasury, and of which, as Comptroller, it was my duty to keep an account. Of those values, an official record was prepared, with statements which are called balance State accounts, which statements were signed by all the chiefs, in proof of the fact that those are the only values of the State. In addition to these, there were in the office a large number of proceedings and filed papers, collected from the time that the Debt was established. Each clerk had an inventory of the papers under his charge, but kept without the necessary formality; and it was impossible to determine whether all the papers there mentioned actually existed—a thing which is not done by any chief in taking possession of his office. In one of these inventories, it appeared that in one of the boxes of the Secretary's office there were six or seven stub books of bonds

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322 of the Debt useless for the service; also, drafts which had lapsed. In that inventory, it appeared that the bonds were punched with a hole, and explained that some were punched on one side and some on the other, giving the condition of each one, and also that they did not contain all the signatures of the chiefs necessary to authorize them to be issued as values. I knew the condition of that class of values, because, as legal adviser, I had been a voting member of the Board of the Debt. Those bond books—stub books of bonds—had been rendered useless by orders from the Ministry, because the Captain-General, or the Intendent, had changed since the date of the bonds, and consequently they could not
323 sign them. So, that some of the bonds had one signature, and some had two signatures, but none of them had the three required. Knowing that these bonds had no value whatever, I paid no more attention to them than to any of the other papers on file, and I did not even count them. It is of this class of bonds that it is said coupons have been collected. I cannot explain this except in the following manner: That the numbers upon the invoices for collection have been changed. I will explain, for this purpose, how the coupons are collected. The holders present the coupons specified or numerated in an invoice, of which this is a model. (Witness produces a paper). *Mr. Olcott.*—I object to the prisoner presenting any model. If he can state
324 what it contains, that is all right, that is a different thing; and he can state it probably from memory.

The Commissioner.—I will allow the prisoner to take his own course in making the explanation; and if he wants this form which he mentions, now marked as an exhibit in the case, I will allow it. *Mr. Olcott.*—The ruling of the Commissioner is objected to, on the ground specifically that the counsel for Spain does not understand that there is any right or privilege allowed to the

demanding government to examine the prisoner, in making his statement; and hence, to permit a paper to be produced by the prisoner, and made a part of his statement, is a bar to the absolute right of examination, which is not permitted under this class of statement. Exception. Said paper marked Exhibit T, February 24, 1890. *Mr. Mallet-Prevost.*—I will hereafter present a sworn translation of this. (Said translation when produced is to be marked Exhibit T1). 325

The Prisoner.—On one side is placed the numeration of the coupons, and on the other side the conformity or approval of the clerk and chief. The clerk is an employee having a desk and attending at the window, to whom are presented the coupons with the invoice, in order that he may count them, and examine whether they are in accord with the statements of the invoice. After he has counted them, and finds that the numbers of them and that the numeration of the coupons agree with the invoice, he cancels them in the presence of the holder, and returns them to him. Because the holder cannot be deprived of his values for even a moment until the money be paid to him in exchange. The coupons are not paid in the Treasury Department, but at the bank. The Treasury Department takes 24 hours in order to examine said coupons, and enter in the books the amounts and the numeration of the coupons and so on, and also for the purpose of securing the signatures of the chiefs and to notify the bank. The clerk engaged in this matter, after he has complied with these requirements of the regulations, signs the invoices, which are in triplicate for each payment—three copies of each; and at the end of the day, or at the hour fixed, he takes them all to the chief for his signature. The chief, or secretary of the debt, is in his office, and is engaged with all the general business of his office, and cannot personally see the coupons, nor compare them with the 326 327

328 books, nor attend in detail to the operations. His duty is from time to time to see that the service is properly carried out, to examine the books, to investigate, etc. At the time of signing the invoices he cannot know whether among the coupons are any bad ones. The invoices which it is stated have been paid, and which refer to bad coupons, the charge says are sixty in number—three times which comes to be 180. Every day it was necessary to sign a large number of invoices. The secretary is sure that when the invoices were presented for his signature there had been complied with all the requisites of the Royal Order and of the laws. Those invoices did not say "Number 16,000," but only "6,000"
329 —which numeration corresponds to the epoch prior to September, 1886, and consequently there must be applied to them the Royal Order of January 2, 1888. It was thus done; and the clerk presented annexed to the invoices the proceeding, with the declarations as to the sources from which said coupons emanated. The books having been consulted, those operations were effected. The Secretary found it satisfactory, and signed. Each one of those proceedings, as appears by the charges, included various invoices; and in this case the last invoice must have the beginning of the report of the clerk, and there must appear evidences of its having been sewed to the proceeding. If the proceedings have been separated from the in-
330 voices, it must have been after the signature of the Secretary was annexed, in order to change the numeration or to perpetrate any other crime. But in that case the experts in the case can easily determine that. Naturally the Secretary may not have seen all the group of invoices, inasmuch as all had to be the same; and this cannot very well be explained. That is to say, looking at the first and at the second and so on, you do not always reach to an examination of the last. The

Secretary had no knowledge before leaving Havana that 331
any of these things had taken place, nor has he any
reason to think that the Intendent knew them, for the
reason that the said Intendent made no complaint
against him, he being the Chief of this service. In this
sense it is that I declare that I am not responsible. In
the adminstrative proceeding, which I presume has been
prepared according to law, they may attack me for ex-
cessive confidence, or for not having had the proper
care with respect to all these details. But this would
not be criminal responsibility. It would be adminis-
trative responsibility. The Spanish Bank is charged
with paying the coupons of the debt, and sub-
sequently presents its accounts accompanied by the 332
coupons, in order that the value thereof may be paid to
it by the Treasury Department. For this purpose an
open account is kept, and approximate credit is given
to it for the account which it is thought that it will pay,
and when it presents the account it is balanced. It is
said (I do not know whether or not it appears in the
charges here) that the Intendent has made claim on the
Bank for the amount which it is alleged was paid upon
bad coupons. Consequently the fraud has not been
upon the State, but upon the bank. That is to say, that
the guilty parties may have made use of some arti-
fice which I suppose is a change of the numeration
of the coupons in the invoices, for the purpose of de-
frauding the bank. There has been presented as a pre- 333
sumption of culpability on my part, the fact of there hav-
been found a draft, having been made by me to Madrid
on the day of leaving Cuba, for $77,000. With respect
to that I should state that I have always had private
capital, and that I have had operations for many thou-
sands of dollars. In the same criminal proceedings it
appears that one of the prisoners, the broker Andrade, has
been employed by me in matters amounting to over $100,-

334 000 four or five years ago. He says the year 1886, but it was in the year 1885. Among the documents which have been found in my baggage there appears a decision of the Department of Colonies, wherein it appears that I have pending a suit against the State for four hundred annuities of the Debt of the value of $50,000 gold. Inasmuch as he has had at various times these large sums of money in his possession, it should not be now a matter of surprise that he should have had at this time the sum which it is alleged he remitted to Madrid. As a public employee, it was natural that I should not use my own name in these matters, because there is a law, which, howevever, is now a dead letter, prohibiting public employees to engage in commercial matters; and, generally,
335 in the collection of coupons, no one gives his own name, but uses that of some clerk or servant. (Recess for half an hour.)

The Prisoner.—On leaving Havana I decided, as was natural, to go to Madrid. It is the custom in Havana, or it is frequently practiced in Havana, in order to send money to Europe, to make use of drafts in English pounds, which can be turned to better advantage, or sold to better advantage, than direct drafts. I have sometimes done it in this way when I have sought to send large sums. Thus it was that when I had concluded the conference which I had with the Intendent, the first thing that I did was to give an order to a
336 broker, in order that he would change my money into pounds sterling. Afterwards I learned that the exchange, which is generally from five to six per cent., could be obtained as low as two per cent.; and that consequently it cost just about the same to transmit in pounds sterling as to transmit directly. And I gave order to the broker, who had been employed by me in other matters prior to that time, to draw by cable directly to a broker friend of mine at Madrid, with whom

I had had other business. In the drafts for pounds 337
sterling which I had previously intrusted to him I gave
him the name of my servant; because I have already
stated, as a public employee, it was not natural to em-
ploy my own name in the matter, nor was it necessary
that the public should know when I left of what
amount of capital I was possessed. I expected to have
taken with me my servant, with whom I was well sat-
isfied, and I had his passport prepared—for which rea-
son also I made use of his name in the draft, in order
to be able to negotiate it in Madrid. At the last mo-
ment, however, I found myself confronted by the diffi-
culty that they would not permit my servant to leave
without giving a bond on account of military service. 338
This did not suit me, and I gave up the idea of bringing
him with me. I forgot at the last moment to return
him his passport, which has been found among the pa-
pers that I brought with me. Consequently this capi-
tal has nothing to do with frauds or crimes relating to
the Debt. Another charge which is made against me
has reference to the statements of Andrade relating to
the receipts found here among my papers. This matter
I explain as follows: It is a common practice for the
holders or owners of coupons, being required to comply
strictly with the official models of invoices, in order
not to make any mistake or make errors, to request the
clerks of the officers of Debt to make the invoices for
them, giving them some small recompense for the 339
trouble. Some brokers are in the habit of doing this
when they have many coupons, the exchange being
almost next door to the office of the Intendente. One
day the Clerk of the Bureau of Coupons told me that
the broker Andrade had requested him to pre-
pare invoices for a large quantity of coupons; and
he asked my permission to have the assistance
of my private secretary if he was not otherwise occu-

340 pied. As Andrade was a friend of mine, who had charge of many matters of mine, it was a favor which it was my duty to grant him, as to many others, the place being small, and we all being known to each other. I then gave an order that during the hours when they should not be occupied with official business they should make those invoices, in order that they might gain some little money, as their salaries are small. The clerk of the coupons told me that inasmuch as it was long work, it was necessary for him to retain the coupons a number of days, and if I would sign some receipts for the broker Andrade. I had no objection to doing this, owing to the friendship that existed between us. I signed the receipts, and each day the clerk kept
341 the coupons in the same box where the useless bonds were kept, for the reason that they were already punched, they having been already counted. To that box the clerk of coupons had frequent access, in order to keep there the bonds that were presented to be converted for mortgage notes, in relation to which the same proceeding is had of counting them in the presence of the holder, and punching them or cancelling them, giving them a receipt which is used by them in Madrid for the purpose of collecting the mortgage notes. A few days later the invoices were completed, and the clerk of the coupons took Andrade's coupons to return them to him. But Andrade did not bring with him the receipts
342 which I had given him, either by reason of his having forgotten them, or having lost them; and he told me that in exchange for them he would give some partial receipts to serve as releases. He said that he would look for my receipts, and that the next time that he came for some other business he would exchange them for the receipts now given by him. Andrade did not return with the receipts; and as I had no use for them, I kept his among my papers; and at the time that I

collected all my papers for my voyage these were among them. I have noticed that in Andrade's receipts he did not mention the numeration of the coupons, but that he mentioned only the quantity and the class of coupons, when, by the very numeration, it might some day be noticed whether the coupons were of those that were in circulation or not. Thus it is that I understand that, without intending to accuse Andrade, who is a friend of mine, it appears that between him and the clerk of coupons the numeration of the coupons may have been changed, presenting to me invoices numbered "6,000", and subsequently changing them to the numeration of "16,000". The numeration "6,000" could not give rise to any doubts, while that of "16,000" was a very recent numeration, and it would have been easy to note that they were not in circulation. Without knowing the details of how they have done this thing, I understand that it cannot have been done in any other way. It may be that the copies of the invoices which have been retained in the office are numbered "6,000", and that those which have been sent to the bank are numbered "16,000." I cannot know any of these details without having examined all of the invoices. I do not know whether in the criminal proceedings in Cuba there has resulted a criminal complicity on the part of any employee of the bank. In the year 1885 one of the syndics of the Exchange of Havana, a person of the highest reputation, my best friend, and who up to that time had been the broker in my business, stole from me $20,000. 343 344 345

Mr. Olcott.—The prisoner is stating what happened in 1885. I move to strike it out. *The Commissioner.*—Ask the prisoner whether this statement which he is about to make relates to the charge against him.

The Prisoner.—Yes, it is for the purpose of comparing it with Andrade.

346 *Mr. Olcott.*—Objected to on the ground that the prisoner has stated through the interpreter that it is for the sake of comparing with Andrade, and therefore it is immaterial and irrelevant. Objection overruled. Exception taken.

The Prisoner. — Consequently, although Andrade was a great friend of mine, I cannot be certain that he may not have been capable of committing a crime against me, notwithstanding the fact that I do not care to accuse him ; or that I have no feeling against him. In the Clerk of Coupons I also had the greatest confidence. He had been in the office of the Debt ever since its establishment, and he had never been in any
347 way mixed up with the frauds which have been committed at other times. On the contrary, I having been the Secretary of a Commission for the investigation of other frauds.—*Mr. Olcott.*—Objected to by counsel for Spain as having nothing to do with the case—as to the confidence or lack of confidence he had in this employee of the Coupons. *The Commissioner.*—Objection overuled. Caution the prisoner again that he must stater nothing except what relates to the crime. State further that the Commissioner says that the prisoner is a man of intelligence, and that he leaves it to his judgment to make his statements in relation only to the crime. Exception taken.

Mr. Mallet-Prevost.—The prisoner states that he
348 thanks you, and that he will attempt to carry out your directions. *The Prisoner* (continuing.)—In this manner I explain what has happened in my absence. In that time I discovered frauds for false issues amounting to $5,000,000 in the military administration ; and opposition was made on the part of the General to the statement of these things, on account of the prestige which the army might lose. I nevertheless, in fulfillment of the law, had no other way open to me than to make

the accusation. Said General, who was at that time 349
the second chief there, sub-inspector of the Military Administration, was a few months later appointed Governor-General, and he discharged me at once. This is when I made that sudden journey to Madrid which I have related; and the administration re-established me in my position. *Mr. Olcott.*—Objected to as immaterial and irrelevant. *The Commissioner.*—The prisoner has been cautioned that the statute permits him to orally make a statment relating to the crime, and he may proceed. *Mr. Olcott.*—Counsel for Spain requests that the prisoner be again cautioned not to relate matters stated by him to have occurred which are not directly connected with this case. *The Commissioner.*—Certainly; and I have already cautioned 350
him. Let the prisioner state how this is material—what bearing it has upon the case.

The Prisoner.—With relation to those matters, General Salamanca in the Spanish Senate took part in the same spirit as Governor-General at that time of Cuba, and that from that time he knew me. General Salamanca came to be Governor-General of Cuba, and found me in the position of Secretary of the Governor-General, immediately under his orders; and as he knew my spirit and my position with respect to military matters, he was not friendly to me.

The Commissioner.—Let the prisoner proceed.

The Prisoner.—As a consequence of this, it resulted 351
that in the claim which I have against the Government he decided against me. *Mr. Olcott.*—Objected to as immaterial. Objection overruled. Exception taken.

The Prisoner.—His decision, however, was not approved by the Ministry. And all this naturally tended to place us in more personal opposition. Thus I am surprised that, not having accused me of anything prior to my leaving Havana, on the day following my departure

352 the General should make an accusation against me of such importance—even before the Court could have given a decree against me. For, in accordance with the treaty and with the laws, I understand that a warrant of arrest could not be issued until after an order of the Judge should have been given, or in case I had been caught in the act, which is the only case for Governmental action. Thus, even in case the General knew that I was responsible, he could not have given an order of arrest until the Judge should have given the order, observing scrupulously the law; while, owing to excessive zeal, which I do not deny, a charge was made by telegram as though an accusation had already been made, and an order given, which had not taken place up to that time.

353 The proof of this is that the accusation first was for a great amount, which has since been diminished. It was given out as certain that I had taken $500,000 bonds of the debt, and that I brought them with me in my baggage.

Mr. Olcott.—This is a privilege that I do not understand is permitted. This is not a statement of fact. *Mr. Mallet-Prevost.*—In the complaint it is alleged that he stole $500,000 of bonds, and I suppose he can answer as to that. The complaint charges him with $690,000 of embezzlement. *The Commissioner* (After looking at the complaint.)—Allow the prisoner to proceed. Exception taken.

354 *The Prisoner.*—As to this matter, they appeared to be absolutely certain, as though they had caught me in the act. It has afterwards turned out that said bonds had no value whatever, inasmuch as they were cancelled and punched, and that I had not them with me. I was also charged with having collected $200,000 of bad coupons; and now it appears that there were only $100,000 of said coupons.

The Commissioner.—State to the prisoner that, as a

lawyer, he knows the distinction between argument and statement, and to have that distinction in view, and not state anything except facts. If the prisoner chooses to stop here, and continue his statement at another time, he can do so. *Mr. Mallet-Prevost.*—He states that he is nearly through. 355

The Prisoner.—With respect to my not going to Havana, although I feel sure that I would not have criminal responsibility, I would not go to any place where I was accused of crime; for while the investigation was going on as to my innocence, I should have to be imprisoned. In resumé, I do not know how the fraud can have been done, and I only give the explanation which I have given as an hypothesis based upon my knowledge of the procedure ordinarily observed there. The money which I have sent to Spain has nothing to do with those frauds. I came of my own free will, intending to go to Madrid to communicate with the Ministry. I beg that you will carefully examine the case, and discharge me. Translation of Exhibit T marked Exhibit T[1], February 24, 1890. 356

CASE FOR THE PRISONER RESTED.

Mr. Olcott.—My procedure will depend somewhat on the extent to which I shall understand your Honor proposes to go as to the line of Exhibits, whether they were admitted specifically. If my memory serves me right, I think, on my objection, that your Honor said they were only admissible provided counsel for the prisoner showed their relevancy and materiality; and that is the line of exhibits that were either marked for identification, or were marked as exhibits in the case. As I have stated, the procedure which I will be advised to take in this matter and in that regard will depend upon how far (and I respectfully ask an intimation in 357

358 that regard) you will go on that line. The treaty itself is distinct in its provisions. We have here a record containing the depositions of witnesses, and showing a course of procedure in the Courts there, all of which have been certified to by the certificate of the Consul General, which has been admitted; and consequently, if we are here to discuss on Spanish law, in defense of the prisoner at the bar, questions of Spanish law, it is as to the extent of the direction on that line and those lines that I would desire the Commissioner to give some intimation. Because certainly, beyond any peradventure, there is an accusation, there are the statements of the parties connected in and with this matter before your Honor, so as to make a *prima facie*
359 case. If your Honor is going into that question, it may be that I will have to introduce some further proof. Because, as for the matter of fact is concerned, we are closed. Our case is contained in Exhibit 3, and the last Exhibit (I think No. 28) in the supplementary deposition of Mr. Andrade, showing the direct connection between receipts found on the body of the prisoner, or in his baggage, and himself, the prisoner Andrade, and these transactions mentioned in Exhibit 3. So that the question of fact, to my mind, is closed. The case of the demanding Government, therefore, has been presented. The case, as matter of fact, in so far as it be matter of fact, on the part of the prisoner at the bar, is
360 closed by his statement just uttered. And so there remains, it seems to me, this other question, as to which I certainly would of course have to give a Roland for an Oliver if necessary, but which, it seems to me, needs some elucidation before going into that special department of the case.

The Commissioner.—We will adjourn this matter until 12 o'clock on Wednesday, the 26th. In the meantime counsel for the prosecution will have time

to go over the case as it now presents itself, and de- 361
termine what further steps he will take.

Mr. Mallet-Prevost.—There are annexed to Complainant's Exhibit 18 two schedules relating to bonds and funds, which are mentioned in the body of the exhibit. Each of these schedules is signed by four parties, namely, (1) the Secretary-Comptroller whose term of office is about to expire, (2) the Secretary-Comptroller whose term of office is about to begin, (3) the Director of payments, (4) and the Central Treasurer. It further appears from an examination of these schedules that they contain no reference to the bonds and coupons which form the subject of this proceeding. *Mr. Olcott.*—Counsel for Spain agrees to 362
the statement of the counsel for the prisoner, subject to comparing, between this and the next session, the schedules with the body of the instrument. Hearing adjourned to Wednesday, February 26, 1890, at 12 o'clock M.

NEW YORK, February 26, 1890, 12 o'clock M.

Present.—The COMMISSIONERS, Messrs. OLCOTT and JUDGE for demanding Government. Mr. MALLET-PREVOST, for the prisoner. The prisoner is produced by the U. S. Deputy Marshal.

Mr. Olcott.—In my remarks to the Commissioner on 363
the last hearing, I asked for some intimation, if possible, on the part of the Commissioner, as to how far he would enter into the consideration of the exhibits which have been offered on the part of the prisoner; because, if they be taken into consideration in any regard, I might have occasion to refer to certain parts of the law myself, and it makes it a little awkward for that reason. *The Commissioner.*—You will have to address yourself to each particular exhibit; and if the rec-

364 ord does not show whether the paper has been finally admitted in evidence or not, a motion will be entertained to strike out the exhibit. *Mr. Olcott.*—What I mean is this. Your Honor admitted the Code of Criminal Procedure, the Code of Commerce, the Instructions as to the attributions and relations of the General and Central Officers of the Treasury, the law for the settlement of the Public Debt of the Island of Cuba, and the regulations for the Board, created by virtue of such law of July 7, 1882, the Constitution of the Spanish Monarchy as promulgated in the Island of Cuba, May 1, 1881; and in connection with those things, it might possibly be relevant and material to go into the
365 proof of some law. *The Commissioner.*—Counsel must decide whether they want to offer any evidence or not. *Mr. Olcott.*—As to certain things, I understand the counsel for the prisoner makes no objection. First there is the Royal Order, of which I spoke to you. (Handing paper to counsel for prisoner.) *Mr. Mallet-Prevost.*—Is this the one of February, 1882. *Mr. Olcott.*—Yes. It is of record, and certified to. *Mr. Mallet-Prevost.*—Here is the Royal Order, which is offered by the other side, the Royal Order of February 26, 1882. It is not certified as is required by the law. Nevertheless, I have no objection to its being admitted. I do not object on that ground; but I now understand my learned friend to say that he has no translation of
366 this. It appears that the certificate of the Consul General is dated last January, and now he presents it without a translation. I will admit it on the stipulation that, in the argument of counsel, if he or I choose to refer to any part of it, we will translate it in our argument. *Mr. Olcott.*—Undoubtedly; and I will have a translation made. *Mr. Mallet-Prevost.*—I will waive the irregularity of the certificate. Said paper marked Exhibit 29, Feb. 26, 1890. *Mr. Olcott.*—In case of the

use by counsel for the prisoner, of the sections of the 367
Codes to which he has referred, I do not suppose it is incumbent upon me (the book being admitted) to do anything more than to cite other articles of the same.

Mr. Mallet-Prevost.—I have no objection to that. *Mr. Olcott.*—I ask Mr. Prevost whether he is willing to admit that that is the official publication of the organic law as to the judicial power in the Island of Cuba, without necessitating any further proof. (Counsel hands book to counsel for prisoner.) *Mr. Mallet-Prevost.*—Is this published for Cuba? *Mr. Olcott.*—It is a law in force in Cuba. *Mr. Mallet-Prevost.* Where does it appear that this is for Cuba? *Mr. Olcott.*—I do not want to discuss anything at all in reference to it. I 368
simply ask the other side. If they do not want to admit it, then I shall apply to prove it in the regular way. Because all these other laws have been presented, and of course I claim they are extrinsic to the case, but I am only preparing myself for the eventuality of their being considered in the matter. As matter of fact, it is cited in docket No. 3. *Mr. Mallet-Prevost.*—If counsel for the other side will show me in the book which he presents anything to prove that this book is in force in Cuba, I have no objection to its being admitted. *Mr. Olcott.*—The lawyer whom I should call is in Washington, and I shall have to get him. *Mr. Mallet-Prevost.*—I am perfectly willing to admit anything that I can feel sure is in force in Cuba; and if 369
Mr. Olcott can show me anything that is in force, I will admit it. I object to further time being given for the purpose of proving the book presented. If I refuse to admit this, do I understand that your Honor will grant an adjournment to the other side to prove this law? If your Honor says you will grant an adjournment, I will admit it. *The Commissioner.*—Since the last adjournment less than forty-eight hours has elapsed, and

370 I am disposed to give the prosecution a reasonable time to produce expert proof of the document referred to, on the counsel's statement that he has endeavored to have such proof here to-day. *Mr. Mallet-Prevost.* — It is not on the record. *The Commissioner.* — I have so understood counsel to say. Let the counsel for the prosecution state on what grounds he asks for this adjournment. *Mr. Olcott.*—Counsel for prosecution asks the counsel for the prisoner whether he will admit the paper now shown him to contain the law specifically referred to and mentioned at page 26, of Exhibit No. 3, of February 7, 1890, and at page 22 of the translation of such Exhibit. *Mr. Mallet-Prevost.*—I am informed by Span-
371 ish lawyers, and it is in evidence in this case, that the laws which are generally in force in Spain are not in force in Cuba unless they are specially enacted for that Island. I therefore request the counsel for the prosecution to point out to me in the pamphlet which they have handed me, and which they have asked me to admit, anything which tends or purports to show that the law contained in this book is in force in the Island of Cuba. *Mr. Olcott.*—I am not going to answer any such question. Counsel for Spain states that if the counsel for the prisoner does not propose to admit the document, he requests a proper adjournment to be enabled to present the proper proof in a proper way. That at the last
372 sitting he stated to the Commissioner and to the counsel for the prisoner, that he would endeavor to avoid having any expert here; and if the counsel for the prisoner does not admit that paper or any of the following propositions that the counsel for Spain proposes now or hereafter to make, he will feel obliged to ask for an adjournment to have an expert here. Counsel for Spain request counsel for the prisoner to state whether he admits that that paper contains the organic law referred

to in Exhibit 3, at page 26, and in the translation of the same at page 22. *Mr. Mallet-Prevost.*—Counsel for the prisoner states that if the Spanish Consul, now present in Court, will swear that that is in force in Cuba, counsel for the prisoner will admit it. *Mr. Olcott.*—The Consul says that he is able to say that that was sent to him officially as being the law in force in Cuba. *Mr. Mallet-Prevost.*—From where? *Mr. Olcott.*—From Cuba. *Mr. Mallet Prevost.*—That is simply that he has received it from there. *Mr. Olcott.*—Counsel for Spain states that the Consul of Spain is able to state that that copy was sent to him officially from the Government of Cuba, as being the law in force there. *Mr. Mallet-Prevost.*—As matter of fact, my client, who is a lawyer, although he does not know this thing is in favor or not, says that although that was passed in 1882, the Courts referred to there have not existed in Cuba until within a few months past. *The Commissioner.*—How much time do you want to call your expert to prove this document? *Mr. Olcott.*—I should ask for forty-eight hours adjournment, to find a man and get him here. I only received the statement of the prisoner late yesterday afternoon, and I have spent the night until two o'clock this morning in preparing the case, and, as I stated on the last sitting, in order to avoid having any expert here and to facilitate the closing of the case. *The Commissioner.*—I think the counsel for the prosecution should have had their testimony here to-day, so as to have anticipated this delay. Nevertheless, I will give them until Friday at two o'clock to produce their proof. *Mr. Mallet-Prevost.*—I take exception to that. And in order to avoid the adjournment to-day, I admit the paper which has been handed me, under protest, and simply for the purpose of avoiding an adjournment. Said paper marked Exhibit 30, February 26, 1890.

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Mr. Mallet-Prevost.—I request counsel for the pros-

376 ecution to indicate what sections of this pamphlet they propose to offer in evidence. *Mr. Olcott.*—Certainly. Article 4, Section 3. *Mr. Mallet-Prevost.*—Has counsel for the prosecution a translation of that section? *Mr. Olcott.*—No, I will translate it now. *The Commissioner.*—I cannot admit any documents in the Spanish language without the accompanying translation. I supposed that the translation had been agreed upon. *Mr. Olcott.*—No, sir; I will translate it. (Counsel for Spain permits the counsel for the prisoner to translate the same.) Said Article 4 is as follows: "In addition to "the incidents with relation to which the law of criminal "procedure gives jurisdiction to the Criminal Courts,
377 "Territorial Courts and Supreme Tribunal, the follow- "ing shall also have jurisdiction: The criminal Courts "shall have jurisdiction of all causes for crimes commit- "ted within the respective province or territory whereof "the ordinary Courts have jurisdctiion, with the excep- "tion of those with relation to which the Supreme Tri- "bunal takes cognizance, and excepting whatever may be "provided in this law, or in any other special laws. "The Criminal Division of the Territorial Courts shall "have jurisdiction of the causes referring to crimes "committed in the exercise of their functions within "their respective territories. 1 * * * 2. * * * "3. By administrative authorities of said places, with "the exception of civil governors."

378 *Mr. Olcott.*—I do not know to what extent any importance is going to be given by counsel for the prisoner in so far as the fact of Mr. Oteiza's going away, as he says, voluntarily, and handing in his resignation as an official of the Spanish Government. And I ask my friend if he would admit that when a resignation of an official is handed in, he must have an accounting as to his office. otherwise it is an abandonment of his office. If he does not choose to do that, I shall have

to give proof on that subject. *Mr. Mallet-Prevost.*— 379
I am informed by my client, who is a Spanish lawyer, that this formality is only necessary where the official has public funds in his custody of which he must give an account. If the evidence shows that the prisoner had in his custody such public funds, I admit the fact. *Mr. Olcott.*—I ask the counsel for the prisoner if he is willing to admit that the office which was held by Mr. Oteiza up to the time he sent his alleged resignation, was such an office as called for such a formal account, or receipt, or release, or examination, prior to the resignation being accepted. *Mr. Mallet-Prevost.*—I am willing to admit that, if the evidence will show that if the defendant had under his charge any public funds as 380
Secretary-Comptroller of the Board of Debt of Cuba, it was his duty to have presented such an inventory prior to his resignation being accepted.

The Commissioner.—Do you mean by that remark to say that you admit that, if the nature of his office was such as made him responsible for public funds, then it was his duty to hand in such a statement accompanied with his resignation prior to its being accepted. *Mr. Mallet-Prevost.*—Yes, sir; that is what I mean to admit. *Mr. Olcott.*—Counsel for Spain asks counsel for the prisoner whether he will admit that there is not in the Island of Cuba what is known in our courts as common law. *Mr. Mallet-Prevost.*—If you say it is the fact I will admit it. *Mr. Olcott.*—Yes, we have proved 381
it before. Counsel for Spain offers in evidence Articles 5 and 6 of Exhibit E, and Articles 383 and 408 of Exhibit D. Testimony closed.

Mr. Mallet-Prevost.—I move to dismiss the complaint and for the discharge of the prisoner. *The Commissioner.*—I will hear the counsel in support of motion at two o'clock.

Recess for half an hour.

382 After recess counsel for prisoner proceeded with his argument on the motion to dismisss the complaint and for the discharge of the prisoner. At four o'clock P. M. argument of counsel for prisoner suspended. Hearing adjourned to Thursday, February 27, 1890, at two o'clock P. M.

NEW YORK, February 27, 1890, two o'clock P. M.

Present—The COMMISSIONER, Messrs. OLCOTT and JUDGE for demanding Government. Mr. MALLET-PREVOST for the prisoner. The prisoner is produced by the U. S. Deputy Marshal.

383 Counsel for prisoner concludes his argument on the motion to dismiss the complaint and for the discharge of the prisoner. Hearing adjourned to Saturday, March 1, 1890, at 10:30 o'clock A. M.

NEW YORK, March 1, 1890, 10:30 o'clock A. M.

Present—THE COMMISSIONER, Messrs. OLCOTT and JUDGE for demanding Government. Mr. MALLET-PREVOST for the prisoner. The prisoner is produced by the U. S. Deputy Marshal.

Mr. Olcott—I call attention to the fact that at page 113 of the record I called attention to the fact that the
384 complaint charges the facts, and mentions "malversation" in one part and "embezzlement" in the other, and in the title says that the prisoner is charged with "embezzlement or criminal malversation"; and in the body of the complaint the word "embezzlement" is used. And the phraseology in the treaty being "embezzlement" or criminal malversation of public funds," I desire that the complaint shall be so amended in that it shall charge the prisoner with committing or conniv-

ing at the embezzlement or criminal malversation "of 385
public funds." *The Commissioner.*—Let the complaint be amended. If the defense want, on account of such amendment, to put in any further evidence, I will take it. Reference to the record would indicate that there was practically no objection made by the defense at the time of the motion made by the prosecution. Of course, I could make no ruling unless there was an objection first. The record would seem to imply that there was no objection to it at the time. I refer to pages 113 and 114. Nevertheless, if the defense think they are prejudiced by this disposition of the case, the case may stop here, and I will hear argument upon the question, as it is not too late for either side to put in any testimony, 386
upon presenting sufficient reason therefor. I will hear the defense.

Mr. Mallet-Prevost.—An examination of the complaint presented to your Honor shows that in the title of the case the crime is referred to as "embezzlement or criminal malversation of public "funds." When we come to the body of the complaint itself, the term "malversation" does not appear. The only charge that is made against the defendant is that of embezzlement of public funds. I therefore object to any change of the record at this time, since an amendment of the complaint would practically present a new case, which would have to be tried *de novo*, none of the proceedings heretofore had been of avail. There is no such thing as the amend- 387
ing of a criminal complaint; and I further object to the amendment that has been proposed by the counsel for the prosecution which refers to the connivance of embezzlement. Connivance of embezzlement does not appear in the treaty; it is not an extradition crime; and if it were charged, it would be of no avail. I object to the amendment of this complaint, because, if there be any difference between embezzlement and criminal mal-

388 versation, it amends the complaint in a material part ; and if there be no difference between those terms, the amendment is useless. *Mr. Olcott*—We will waive the last "connivance." *The Commissioner*—I will allow the amendment asked for. And I repeat what I have already stated, that if the case is to be reopened on that account, I will allow it to be reopened without prejudice to either side. Exception taken.

Mr. Olcott.—I state that if the counsel for the prisoner wants to present any proof, I am ready. *Mr. Mallet Prevost.*—I simply take my exception.—Does your Honor allow the complaint to be amended so as to include "connivance of embezzlement" asked for ? *The*
389 *Commissioner.*—I do not understand that the counsel wishes to amend by having the word "connivance" inserted, but simply the words "or criminal malversation" wherever the word "embezzlement" appears. To that extent only do I allow the amendment. *Mr Olcott.*—My friend has laid great stress on the Criminal Code of Cuba, and the very section he has quoted (section 401) says : "Such public employee as, by reason of "his office, having in charge public funds or effects, "shall take the same away, or consent that others take "them away, shall be punished as follows."

The Commissioner.—I will allow the complaint to be amended as counsel for the prosecution evidently supposed it had been amended, by using the words "or
390 criminal malversation" after the word "embezzlement" wherever it appears in the complaint. *Mr. Mallet Prevost.*—I accept on the grounds stated.

(Counsel for Spain commences his argument in opposition to the motion to dismiss the complaint and for the discharge of the prisoner.) (Argument suspended at 1.30 P. M.) Hearing adjourned to Monday, March 3. 1890, at 11 o'clock A. M.

NEW YORK, March 3, 1890, 11 o'clock A. M. 391

Present.—The COMMISSIONER, Messrs. OLCOTT and JUDGE for the demanding Government; Mr. MALLET-PREVOST for the prisoner. The prisoner is produced by the United States Deputy Marshal.

Counsel for Spain continues his argument in opposition to the motion to dismiss the complaint and for the discharge of the prisoner. At 4.30 P. M. counsel for Spain states, that he will rest here, as he understands that further time is to be given to counsel for the prisoner—to which counsel for Spain is entitled to reply.

Hearing adjourned to Tuesday, March 4, 1890, at 11 o'clock A. M. 392

NEW YORK, March 4, 1890, 11 o'clock A. M.

Present.—THE COMMISSIONER Messrs. OLCOTT, and JUDGE for the demanding Government Mr. MALLET-PREVOST for the prisoner. The prisoner is produced by the United States Deputy Marshal.

Counsel for Spain asks for an adjournment, on the ground that he is physically unable to go on with the hearing. Hearing adjourned to Wednesday March 5, 1890, at 12 o'clock M.

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NEW YORK, March 5, 1890.

THE COMMISSIONER. Mr. OLCOTT for the demanding Government. Mr. MALLET-PREVOST for the prisoner. The prisoner is produced by the United States Deputy Marshal.

Counsel for the prisoner replies to the argument of Counsel for Spain.

Counsel for Spain begins the closing argument on be-

394 half of the demanding Government. (Argument suspended). Hearing adjourned to Thursday March, 6, 1890. at 11 o'clock A. M.

NEW YORK, March 6, 1890, 11 o'clock A. M.

PRESENT.—The COMMISSIONER. Messrs. OLCOTT, and JUDGE for the demanding Government Mr. MALLET-PREVOST for the prisoner. The prisoner is produced by the United States Deputy Marshal.

Counsel for Spain concludes his argument on behalf of the demanding Government.

Briefs to be handed in by Saturday March, 8, 1890.

395 Hearing adjourned to Thursday March, 13, 1890, at 11 o'clock A. M.

NEW YORK, March 13, 1890, 11 o'clock A. M.

PRESENT.—The COMMISSIONER; Mr. OLCOTT for demanding Government; Mr. MALLET-PREVOST for the prisoner. The prisoner is produced by the U. S. Deputy Marshal.

The Commissioner. I have decided in this case that the prisoner should be committed, for the following reasons:

The prisoner, Luis Oteiza y Cortes, was arrested on
396 the 2nd day of January, 1890, in this city, on a complaint, made under oath by Miguel Suarez Guanes, Consul of the Kingdom of Spain at this port, charging him with having committed the crime of "embezzlement or criminal malversation of public funds" within the jurisdiction of the Kingdom of Spain, in that, while the said Oteiza was the Secretary of the Bureau of Public Debt of the Island of Cuba, at Havana, and an officer in the employment of the Kingdom of Spain in that city, he

did, as such officer and servant in charge of the said 397
Bureau, "on or about the 28th day of December, 1889,
" wrongfully and feloniously embezzle bonds or certifi-
" cates of indebtedness, belonging to said public Debt
" of the Island of Cuba, of the value of $190,000, and
" converted the same to his own use, and also the cou-
" pons of other Government bonds of the value of
" $500,000 and the stub book thereof also." He is fur-
ther charged with having, since the commission of said
crime, fled from Cuba, and having sought an asylum
within the United States of America. The complaint
further goes on to state that criminal proceedings have
been begun in the city of Havana against the said Cor-
tes for said embezzlement; and his extradition is asked
for, that he may be tried for said offense, pursuant to 398
the provisions of the treaty or convention of extradition
between the United States and Spain of January 5,
1877, and the supplementary treaty of August 7, 1882.
The defendant's contention, on the charges and proofs
submitted here, is, that he is in no way implicated,
except possibly in being negligent in signing the certifi-
cates upon which payment of the securities was made;
that for this negligence he is responsible civilly, and not
criminally—a responsibility to be determined by the
Administrative Commission, the proceedings of which,
not yet concluded, also set forth in the evidence, were
taken preliminary to the commencement of criminal
proceedings, pursuant to the practice obtaining in 399
Cuba. And that, if any criminality has been proved, it
does not come within the treaty provision relating to
"criminal malversation of public funds," under which
his extradition is demanded, since the bonds have never
been legally issued, one or more of the signatures neces-
sary thereto never having been appended to the bonds;
in consequence of which, the bonds in question, he
claims, were canceled by order of the Government. The

400 evidence shows that the treasury of the Cuban Government has been defrauded into the payment, through its fiscal agent, the Spanish Bank, of $100,000 or thereabouts, upon coupons which were detached from the bonds in question. In order to understand the way in which this fraud was carried out, as well as for the better understanding of the merits of the case as presented by the prosecution and the defence, it is necessary to examine into the method employed by the Cuban Government to liquidate the claims which constitute what is known in these proceedings as the "redeemable debt" of the Spanish Government in the Island of Cuba. By an act of the Government,
401 passed July 7th, 1882, provision was made for liquidating this debt by the issue of bonds with annuity or interest coupons attached; and a Board of Commissioners comprised of a number of officials named in the Act, was constituted for the purpose of passing upon the claims that should be presented, and of determining the issue of bonds to meet them. This act also specifies the duties of the person holding the office of Secretary-Comptroller of the Board of Debt, the position which it is shown in this case, and not denied, the defendant held at the time of the commission of the fraud in question, he having taken office on October 8, 1889. It was the duty of the defendant to examine into the claims as they were presented from time to time, and report them
402 to the designated departments, which in turn submitted them to this Board of Commissioners, where they were admitted or rejected, as the case might be. The result of this was certified by the Secretary-Comptroller to the Treasury Department, and then the bonds were prepared for issue—whether by the Secretary-Comptroller, or the Treasury Department, or by whom does not appear. A number of these bonds, after being properly signed, were deposited as the law required for use as

occasion required. The law provides (Article 117) that 403
"*so long as* the office of the Secretary of Debt has no
"special treasurer, the *Comptroller of the Debt*, the
"Central Treasurer and the Chief Ordenador of the In-
"tendency (Treasury) shall have charge of the keys of
"the safe for the custody of effects and values, since
"they are the ones who authorize the pay-
"ment of the debt, and the bonds shall be
"placed in the custody of the Central Treasury."
The evidence in this case shows that, besides such bonds as were in the Central Treasury, there were a number of bonds kept in a safe of the office of the defendant, the Secretary-Comptroller of the Debt, of which safe he had the key. These bonds are pre-
served in bound books, called stub books. The bonds 404
in question or the coupons, rather, for the stub book containing the bonds has been abstracted, were annexed to the stub book known as "Series F," and were numbered from 16,001 to 16,500. It is contended by the defendant that none of the bonds and coupons of the redeemable debt in the custody of the Comptroller were completed ready for issue, and that all were cancelled. But it does appear that certain bonds of the redeemable debt that were left in the custody of the Comptroller's office at a date prior to his qualifying as Comptroller were *burned* and *destroyed* by order of the Government, while others, consisting of a number of
stub books, including the said book in question, Series 405
F, were not burned, but were left remaining in his custody. It is necessary, also, to understand the method adopted for paying the coupons as they were presented by the holders. It seems that certain forms are required in order to secure the Government against impositions. The methods appears to be for the holder of the coupons to present a list, called an invoice, setting forth the number of the coupons, the series of the

406 bonds to which they belong, and their amount, together with the coupons themselves, at the office of the Comptroller of the Debt. The list is signed by the owner. The coupons are thereupon, in his presence, examined by the Secretary's office, and, if identified as corresponding to the records of the office (for the office of the Secretary is supposed to have a complete record of all the bonds), they are so certified by the Secretary and an under official (in this case Maig, also a fugitive from justice), and passed to the Treasury official, known as the "Intendent," who thereupon appends his own signature. The coupons meanwhile having been *stamped* or *perforated*, and returned to the holder, with the list or invoice. The invoices are made out in
407 triplicate, and a second is presented to the Spanish Bank, this fiscal agent of the government, where the holder presents his coupons and list, and receives payment. It is important to observe, in this connection, that these lists contain the following statement: "The "coupons specified herein, which amount to a total of " have been presented on the date of this "invoice, have been canceled by the office of the Sec- "retary-Comptroller in the presence of the holder, and "will be paid by the Spanish Bank of the Island of "Cuba, by virtue of the order placed upon this invoice, "upon presentation thereof to the cashier of said bank "together with the said coupons, whereon there shall be
408 "stamped 'paid' on the backs thereof, as without "which requisite they shall not be charged to the ac- "counts of said bank." Then follows the date and the signature of the Secretary-Comptroller, Chief of the Bureau; and underneath "Let payment be made to "bearer upon presentation of this invoice and of the "coupons therein specified," signed by the Intendente Genersl of Finance, and underneath the signature of the holder. The bank, upon payment, also subscribes

to the list, one copy of which it has retained, an indorsement of the date of payment, and the statement that "the coupons remain deposited in the safe of this "bank." It is to be observed that no bonds had been prepared by the government since the defendant came into office; and it would seem, therefore, that all the bonds, whether in the treasury department, or those that still remained with the Secretary of the Debt, including the bonds in question, had been prepared after the Board of Commissioners had adjudicated the claims, and after at least one or more of the signatures of the officials required to complete the bonds had been appended. Proceeding, then, to the evidence in the case as to the defendant's guilt, the following appears: In the early part of November last, the defendant, so the witness Andrade testifies, asked the witness if he could collect some coupons of bonds of the redeemable debt, stating that there was a large amount of them, and that it would be necessary to divide them into three parts, because they could not be cashed at the bank until December. An arrangement was thereupon made with two other parties by Andrade, and an understanding by the prisoner to that effect, that the defendant should procure the coupons, and that the witness Andrade himself and the two other parties should sign the list above described as holders thereof, so that they might obtain the payment of the coupons at the bank. The defendant thereupon had the coupons cut from the bonds and the lists prepared, took them himself to the witness Andrade, who gave the defendant the three receipts therefor in evidence in the case (hereinafter more particularly referred to;) Andrade thereupon, and the two other parties, personating holders, signed the lists as "bearers"; the coupons described on the three lists or invoices were presented at the Spanish bank by them on the 2nd, 4th, and 7th

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412 days of December, or thereabouts, when they were paid, and the proceeds given to the defendant. The amount in this way collected was $100,000, which the witness Andrade testifies he delivered over to the defendant on or about the 7th of December. The presentation of these coupons at the request of the witness Andrade by the other two parties is testified to by *them*, and the payments thereon, as above stated, to them, are also confirmed by them and by the bank. The motive stated by Andrade drade for his engaging in the matter is claimed to have been entirely innocent, and was simply to obtain a commission upon the transaction, as in other cases of the collection of coupons. Nevertheless, both he and the
413 two alleged confederates have been under criminal prosecution at Havana for participation in this offence. About this time, and subsequently to the paymunt of the coupons, the defendant is shown to have procured two bills of exchange, for the sum of $500 and $5,000 respectively, drawn upon a broker in the city of Madrid, in favor of Francisca Cortes, the mother of the defendant; and on the *27th* of December, the testimony shows the defendant applied for drafts for $75,000 to the order of a broker in Madrid in favor of one *Romero*, stating to the broker, at the same time, that he wished the drafts to be prepared and ready at nine o'clock on the 28th. It appears that on the 28th, at nine o'clock,
414 he appeared at the office of the broker, and stated that he wanted, instead of Sterling exchange, a transfer by cable on Madrid in favor of the same party, Romero, the defendant being compelled to pay in order to obtain said transfer, the sum of $79,000 or thereabouts. It also appears in evidence that on the 27th day of December, proceedings had been taken by the government to investigate payments of invoices made by the bank through a certain period of time covering the period in

question ; that the defendant was applied to to furnish 415
the list &c., and was directed to appear for examination
on the following day, the 28th ; that, instead of appear-
ing for examination on the 28th, he left a letter with
the government official representing him at his office,
stating that "on account of the personal antagonism
" of some of the officers, he had resigned his position,
" which fact he did not wish to have known until he
" had sailed, so that no explanation would be asked of
" him by his friends, and that his enemies could not
" misrepresent him, &c." Subsequently the safe in his
office was opened by order of the Chief Investigator ap-
pointed by the government ; and in his report of the 31st
of December, 1889, the following appears : "The securi- 416
" ties were compared with those that were taken from
" the safe of deposit," (referring to the securities that
are shown by the exhibits to have been in that safe at
the time the defendant assumed office, October 8, 1889)
" and it appears that the complete stub book of series
" F of the redeemable debt numbered 16,001 to 16,500
" with all their coupons was missing. Having also
" examined the list which appear to have been paid
" without previous authentication, or without proof of
" it, it also appeared that the numbers of the coupons
" corresponding to said list corresponding precisely in
" numbers to the bonds corresponded to said stub book
" missing." &c. The defendant is shown to have left
Havana on the morning of the 28th of December, and, 417
as already stated, was soon afterwards arrested in this
city. On his person were found certain papers, being
exhibits in this case ; viz., a passport for himself to
travel in the *United States*, a passport for one Romero
to travel in the "*Peninsula*" (meaning Spain), and
the three receipts from the above mentioned witness
Andrade for the coupons above referred for the amounts
of $13,000, $41,000 and $46,000 respectively (total $100,-

418 000). In other respects, the receipts read as follows : "Received from Mr. $ "in coupons of the redeemable debt of the Island of "Cuba, with the collection of which said gentleman has "commissioned me, I binding myself to deliver the "proceeds to him as soon as the same shall come to "hand ; and for his protection I sign these presents "at Havana on the 14th day of November, 1889." (Signed) "A. Andrade." The contention of the prosecution is that the defendant intended the passport in the name of "Romero" to be used by him in case he proceeded to Spain, in order that he might travel under an assumed name ; that he procured for that purpose the transfer of the $77,000 in the name of
419 Romero, that he might collect the funds without being identified ; that he had no intention of travelling in Spain under his own name, and that, therefore, the passport in *his own* name was obtained simply for use in the *United States*. There is nothing in the testimony to contradict the case as made against the defendant except his personal statement, not made under oath, and made by him under the practice now prevailing under the criminal code of this State. This statement, the prosecution contend, will not bear examination, and a careful scrutiny of it, it seems to me, fully confirms the view taken of it by the prosecution. The explanation by the defendant of his possession of the *three receipts*,
420 as well as of the use of the name of Romero in the passport and in the draft, especially will not bear examination, and the suspicious circumstances are not satisfactorily explained by him. There can be no question but that, so far as the facts are concerned, it is the duty of the committing magistrate to pass upon this branch of the case as one calling for a trial of the prisoner rather than for his discharge. But the prisoner is, nevertheless, entitled to his discharge, unless the prosecution

also show probable cause to believe that the offence in 421
this case comes within the terms of the treaty under which his extradition is asked. It is contended by the defendant that the bonds and coupons in question were never issued; that the signatures of these bonds were never all of them appended, that they could not be legalized because some of the officers whose signatures were necessary, have gone out of office since the date of the bonds; and that, as a result of this imperfection, the bonds were ordered to be cancelled, and were accordingly punched. In other words, the defendant's contention is that he cannot be held on a charge of embezzlement of public funds, because the securities in question were simply worthless and of no binding effect on 422
the government. In the criminal proceedings at Havana, it appears that the criminal Court, having ordered the Intendencia General to make an investigation about the payment of the coupons of the Debt, a report appears from him, as follows: "In the safe of the "office of the Secretary of the Board of Debt there "were only stub books without the necessary require- "ments for making the payment ordered by the Board; "that *some of them* had the bonds and coupons can- "celled, and others *were not cancelled*, but lack- "ing always the requirements of authorizazion "for making payments with them; and that at "this time he cannot report by whom they were can- "celled, on account of what orders, because the de- 423
"posits of said bonds was made so long ago," &c. Nevertheless, in the early part of the investigation, the Chief Investigator, de Haro, appointed by the Government, reports as follows: "Having examined "the statement showing the issue of bonds of the "redeemable debt; and it appearing from the same "that issues made to date only reaches to the number "15,000; and having also examined the lists paid which

424 "appear without legal justification in the payments
"of the coupons corresponding to the same; and it
"appearing from the said list that the numeration of
"the aforesaid coupons start from 16,000 onward; it is
"concluded that said coupons paid are either forged, or
"belong to stub books that have not been officially
"legalized for the issuing thereof; and therefore let the
"Chief *pro tem.* of the office of the Debt present the
"notes of the entry book as to stub books of certifi-
"cates taken from the deposit for legalization, in order
"to prove if the stub book 16,000 has or has not been
"legally taken from the aforesaid deposit."

As a matter of fact, it is not clear in just what condi-
tion the missing bonds were with reference to the re-
425 quirements of the law to make them complete. But the
circumstance must be borne in mind, in this connection,
that some of the coupons were in such a state that they
could be collected after having been detached from the
bonds. And this, certainly, has a bearing upon the
question as to whether all of the bonds in question to
which they were attached were cancelled. Certainly, if
the missing book of bonds were produced, all these
doubts would be solved. Where is it? Can the pris-
oner be heard to demand positive proof on this point,
and at the same time withhold the book which he is
shown to have purloined, property entrusted to him as
an official of the Government, and deposited in his
426 office in a safe, the keys of which were in his control;
thus depriving the Government of its property, and at
the same time demanding of that government proof of
the contents of that book beyond the peradventure
of a doubt, before putting him upon his trial
for the offence of embezzlement? He has
been entrusted as a high official of the Gov-
ernment with these very bonds and others, and
has abused his trust, and made use of his office to ab-

stract a portion of these bonds, as well as to defraud his Government into payment of the coupons with which he was entrusted. (See Bishop's Crim. Law, Vol. 2, Sec. 364; 31 Cal., *in re* Hedley). But leaving the question raised by the defendant as to whether the bonds in question were or were not public funds, depending, as he claims, upon whether they were or were not valueless, one thing is clear, and that is that the coupons which had been detached from those bonds in question by the defendant were in such a state that when, by the terms thereof, they became due, they could be, through the instrumentality of the defendant's signature, collected of the Government by the *bearer*, whoever he might happen to be, and were, in fact, as already shown, so collected to the extent of $100,000. Were not these, then public securities—which it will be conceded are included within the generally accepted definition of "public funds"? We cannot agree with the defendant's counsel that the bank, which, it is shown, does not pay the coupons until they themselves are presented, would be bound to pay them under the order of the invoice, even though they should appear on their face to be invalid and worthless. 427 428

If we turn to the decisions of the Courts in this country, we find instances where the securities had not been legally issued, by banks, although they had been completely signed, and yet, having been taken from the possession of the bank by means of a robbery committed upon it, it was held, on an indictment for "receiving promissory notes usually called bank notes," in answer to the objection that they were of no value, and therefore could not be the subject of an indictment, that they were of *some value*, and that it was a case in which a most serious *injury* was intended, and that had the issues been put in *circulation*, though *tortiously*, the banks might have been ruined; and 429

430 that there was no color for saying that the securities in question had no intrinsic value. (See People *vs.* Wylie, 3 Hill, 194.) In a case in Massachusetts, Commonwealth *vs.* Ramm, 7 Metcalf, 475, where the indictment was for larceny of certain *bank bills* which had been *redeemed* by the bank, and were in the *hands* of its *agent* at the *time of the theft*, the Court held that an indictment was sufficient which specified the property as "bank bills."

Both these cases are cited and approved in the case of Bork *vs.* People, 91 N. Y. p. 5. Others, too, have been cited by the prosecution to the same effect. Applying this principle to the coupons in question, it
431 would seem that if the offense charged should be comitted here, the prisoner should, at least, *be committed for trial* under an indictment specifying the "embezzlement of public funds." But the facts proved in the case would certainly make him amenable for criminal prosecution for "embezzlement," as the law stood at the time of the enactment of the treaty, under the statutes in this state as they existed at that time. The offense charged comes within subdivision 2 of Section 528 of the New York Penal Code, passed July 26, 1881, and Laws of New York, 1874, Ch. 207. This branch of the defense is not unlike that interposed in Benson *vs.* McMahon, reported in 127 U.S. Sup. Ct. Rep., 457. The extradition of the prisoner in that case was asked for by the
432 Mexican Government on the claim that he had committed forgery in the city of Mexico. The specific act alleged was that he had forged the name of the proprietor of an operation company to tickets of admission to a performance to be given by them in the city of Mexico, by causing such tickets to have printed upon their face the name of the proprietor, without his authority, &c. The defense claimed that the facts did not bring the offence within the definition of forgery as knownto the

"common law; and the Supreme Court held "that the 433
"common law of England could hardly be said to be the
"only criterion by which to construe the language of a
"treaty between Mexico and the United States." That
there were "no common law crimes of the United States,"
and that the "common law is now only appealed to as an
"aid in the definition of crime"; that the Spanish Term
"for the designation of the crime of forgery was la fal-
"sification"—From all which "it did not appear that
"the Mexican authorities intended to be bound in the
"treaty by any very restricted use of the word 'forgery',
"when the question concerned an offense of that char-
"acter committed in Mexico." That "it was for an
offense against Mexican law" that the prisoner was held
to answer; and that the question was simply whether "he 434
had committed an offense for which, according to the
treaty, he should be extradited to that country and
there tried." As to the interpretation to be put upon
the acts in question of this defendant when applying the
phraseology of the treaty "embezzlement or criminal
malversation of public funds," the case seems stronger
for remanding the prisoner for trial than in the case
above cited. For in this case not only has the criminal
investigation by the Spanish Courts at Havana been or-
dered by their criminal court, three judges, in accord
ance with the practice obtaining there in such cases,
having before it, among other things, as shown by the
complaint of the "Attorney for his Majesty" there, 435
the report of the Chief Investigator, referring to the
bonds in question as "not having been officially legal-
ized for the issuing thereof;" but the Court say in
their decree appointing one of their number to continue
the criminal proceedings against the defendant and
others, "whereas it appears from the annexed proceed-
"ings annexed by the Attorney-General to his com-
"plaint, that upon examination made by the Chief In-

436 "vestigator of the safe deposit of the Board of Debt, "it has been found that there is missing a complete "stub book of the series F from No. 16,001 to No. 16,-"500, with all its coupons; and that the said coupons "which were due have been collected at the Spanish "Bank, as it appears proven by the sixty lists found "in the administrative proceedings. Considering that "the acts denounced by the Attorney General have all "the characters of the crime of malversation of public "funds, and abandonment of public office specified in "articles 401 and 383 of the Penal Code. Considering "that in accordance with Section 3 of Article 4 of the "additional organic law, this Court is competent to
437 "take cognizance of criminal proceedings against the "administrative authorities of these provinces. This "Court declares itself competent to prosecute this cause "and take cognizance of the same," etc., etc. And the judge who was appointed by their number to continue the criminal proceedings, subsequently, in the proceedings as proved in this investigation, reiterates the same charge. The above facts are referred to, not as decisions *res adjudicata* upon the point raised by the defendant for as to him they were *ex parte*, but certainly they are to be regarded as showing the construction put upon the offense by the criminal judges of the Spanish Government sitting at Havana.

438 The difficulty of defining, in an extradition proceeding such *as the present*, the exact meaning to be put upon words of a treaty expressed in a foreign language, is very well illustrated in the present case. The language of the supplementary treaty of April 9, 1883, reads in Spanish, corresponding to the English translation therein "embezzlement or criminal malversation of public funds," "la sustraccion ó malversacion criminal de fondos publicos," which identical expression is used by the Attorney for His Majesty in the criminal court

at Havana, upon which was based the decrees of the three judges referred to, as a description of the offense charged against the defendant. And the section of the Spanish Code which those judges refer to, at the same time, as the one covering the offense of the prisoner, is article 401 of the Penal Code of Cuba. Upon examining the article referred to, it appears as the first article under Chapter 10, entitled "malversacion de caudales publicos;" and throughout this chapter the phrase "caudales publicos," which has evidently been translated "public funds," is regarded as comprising the term "effects;" for wherever it appears in that section, we have the phrase "caudales ó effectos publicos," meaning "funds or public effects." Furthermore, in article 13 of the treaty, the word "embezzlement" therein, instead of corresponding to the Spanish "la sustraccion" as in article 12, is made to correspond to the Spanish phrase, "malversacion de caudales;" and this last phrase, as already stated, appears in the title of Chapter 10 of the Penal Code above referred to. The conclusion would seem to be that the Spanish Term, translated in English in the treaty as "public funds," has a more comprehensive meaning than the restricted one which the defendant contends for. Without referring at length to a further contention by the defendant that the Cuban Court is without jurisdiction by reason of the proceedings showing a defect in the practice, it is sufficient to say that it does not seem to be well taken. From the record as produced it would seem that the Court there has substantially complied with the law requiring that a preliminary investigation, known as the "administrative proceedings," should be taken. It was these proceedings that the record shows the defendant had notice of before his departure from Cuba; and it was not until they had arrived at that stage where it seemed that the in-

442 stitution of criminal proceedings was necessary that they were commenced. The chief investigator says that it is, in his opinion, "indispensable that the Courts of "justice should take cognizance of the same," &c., and proceeds to certify the record of the administrative proceedings to the attorney for his Majesty, who, in his application for the order of arrest, recites the preliminary "administrative proceedings." And, furthermore, in the decree of the Court above referred to, three judges sitting, the declaration of the Court is made to the effect that it is "competent to take cognizance of the criminal "proceedings against the administrative authorities of these provinces." This, it seems to me, should be regarded in these extradition proceedings as *prima facie*
443 proof that the criminal proceedings were regularly taken. The able argument and brief of the counsel for the defendant have been carefully considered; and on that account the reasons for the conclusions reached in this case, above set forth, have been extended beyond the limits that the case would otherwise have received. The duty of the committing magistrate in the asylum country, in extradition proceedings, is clearly laid down in the case of Benson *supra*, where the Supreme Court say that the proceedings before the Commissioner is not to be "regarded in the nature of a final trial, by which "the prisoner could be convicted or acquitted of the "crime charged against him, but rather of the character
444 "of those preliminary examinations, which take place "every day in this country before an examining or com- "mitting magistrate for the purpose of determining "whether a case is made out which will justify the "holding of the accused, either by imprisonment or "under bail, to ultimately answer to an indictment or "other proceeding, in which he shall be finally tried "upon the charge made against him." See also *in re* Farez, 7 Blatchford, 344; and *in re* Herris, 33 Fed.

Rep., 165. The facts proved here present a case to 445
which the decision *in re* Benson is peculiarly applicable. The difficulty of determining the condition in which the bonds that were abstracted were at the time they were taken as well as the other material facts in the case, not to mention the question of liability of the bank thereon under the Spanish civil law, in any other tribunal than the one sitting in the foreign country, in the place where the offence was committed, is apparent. No other view than that expressed by the Supreme Court would make it practicable to enforce the treaty in the spirit in which it was made and intended, in such a case as the one now under examination. The conclusion is, therefore reached that the prisoner should be remanded for trial 446
in the courts of the demanding country. Examination concluded and prisoner committed. It is understood that counsel for the prisoner shall have two days within which to apply for a writ.

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448 COMPLAINANT'S EXHIBIT No. 2 in EVIDENCE JANUARY 24, 1890. E. H. C., STEN.

[SEAL.]

N. 1,416,651.

Don Aniceto de Palmay Lujan, Magistrate in charge of the case upon embezzlement of public funds against Don Federico Prado and Don Luis Oteiza y Cortez and others, to his Excellency Senor the Governor General of this island. Whereas, it appearing that a stub book of redeemable bonds of the series "F," has been taken from Secretary's office of the Bureau of Public Debt, from the safe in said office, which was in the safe in said office and the custody of which was under the
449 charge of Luis Oteizay Cortez as Secretary, and which coupons were collected in the Spanish Bank to the amount of $100,000; and it appearing from the record of the case that there are indications of culpability against the aforesaid Oteiza, in consequence of which he was declared to be proceeded against and his arrest was ordered; and, Whereas, the said Oteiza has absented himself from Havana and abandoned his office on the 28th day of December last, and has taken passage in the steamer "Olivette," bound for the United States, where he has been detained; and it appearing that the District Attorney of his Majesty, made a criminal complaint on the 1st day of the current month against
450 Luis Oteiza and others for the crime of embezzlement, and abandonment of their office, considering that the crime of embezzlement, when the amount stolen exceeds 125,000 pesetas as in this case happened, is punishable with the temporary punishment by chain, and disfranchisements, in conformity with No. 4 of Article 401 of the Penal Code; and Whereas, there are grounds sufficient to believe that Sr. Luis Oteiza y Cortez is criminally responsible for said crime; Considering, that in

conformity to Article 503 of the Law of Criminal Procedure the provisional arrest of the parties accused may be ordered, when it appears that there are sufficient reasons to believe them criminally responsible, and the proper penalty is superior to that of the correctional imprisonment; Therefore, the provisional imprisonment of Luis Oteizay Cortez is hereby ordered; And in order that your Excellency through the proper delegates may proceed to arrest Luis Oteizay Cortez, in any place where he may be found, I issue this present mandate in Havana on the 8th of January, 1890. Aniceto de Palmay Lujan. Emilio Valdes Valenzuela, Clerk. 45[1]

I, Venancio Zorillay Arredondo, President of the Territorial Superior Court of Havana, hereby certify that the foregoing signatures of Mr. Aniceto de Palmay Lujan, Magistrate of the criminal branch of this Court, and the Judge in charge of the proceedings against Federico Prado, Luis Oteiza y Cortez, and others, for embezzelment of Public Funds, and that of the Clerk appointed for said process, Don Emilio Valdes Valenzuela, are their own and genuine, and are those that are used constantly in their writings. In Testimony Whereof I issue this present, scaled with the seal of this Court at Havana on the 8th of January, 1890, Venancio Zorilla y Arredondo. 45[2]

[SEAL.]

(Governor General of the Island of Cuba). I Manuel Salamancay Negrete, Lieutenant General of the National Armies, Governor General and Captain General of the Island of Cuba., etc., etc., Do Certify; that Venancio Zorillay Arredondo, by whom the foregoing certificate is signed is as he styles himself therein President of the Territorial Superior Court of Havana, and that the signature of his name and surname is similar to the one he is accustomed to use in all his 453

454 official acts ; and in testimony whereof I issue this present at Havana on the 9th of January, 1890. Manuel Salamanca y Negrete.

[SEAL]

Consulado General of the U. S. of America, at Havana, Island of Cuba. I, the undersigned Consul Gen'l of the United States of America, at Havana, Cuba, do hereby certify, that the signature to the foregoing and annexed document of Don Venancio Zorilla y Arredondo, President of the Superior Court of Havana, to which is also affixed the seal of said Court certifying to the signatures of Don Aniceto de Palma y Lujan, Associate Justice of said Court, charged with the criminal proceedings
455 against Don Federico Prado, Don Luis Oteiza y Cortez and others, for embezzlement of public funds, and of Don Emilio Valdes Valenzuela, appointed Clerk of said Court in said proceedings is the true and genuine signature, in the handwriting of said Don Venancio Zorilla y Arredondo, President of the Superior Court of Havana and such as he is accustomed to use in his official acts ; I also certify that the signature of Don Salamanca y Negrete affixed to the foregoing and annexed certificate to which is affixed the seal of the General Government of the Island of Cuba, are the true and genuine signature and official seal of his Excellency Don Manuel Salamanca y Negrete, Governor General of the Island of Cuba, and such as he is accustomed to use in his
456 official acts. And I do further certify that the foregoing and annexed original warrant of arrest has been pr operly and legally authenticted so as to entitle it to be received for similar purposes by the Tribunals of Spain and of the Island of Cuba. In witness whereof I have hereunto set my hand and affixed the seal of this Consulate General at Havana the 18th day of January, 1890. Ramon O. Williams, U. S. Consul Gen'l.

[SEAL.]

Authenticated copy of certain parts of the criminal

proceedings about malversation of public funds, followed against Mr. Federico Prado and others, for use in the proceedings for extradition to be instituted on account of the capture at New York of Luis de Oteiza y Cortez. 457

EXHIBIT 3 FOR IDENTIFICATION, JAN. 14, 1890. E. H. C.

" " " " " 24, "
" " " " FEB. 7, "

[SEAL.] No. 1,416,593.

I, Emilio Valdes Valenzuela, commissioned as Secretary in the criminal proceedings for malversation of public funds instituted against Federico Prado and others, do certify that in the above proceedings are found the following points: Spanish Bank of the Island of Cuba. (Official Communication, folio 1.) To the Governor, your Excellency: In compliance with the request of your Excellency in your communication dated the fourteenth of November last, I have the honor to send you hereto annexed the statement of the list of coupons of the Redeemable Debt and of the annuities paid by this bank, by virtue of notice of the Comptroller's office of the Bureau of the Debt, from the first day of November last past to the fifth instant, amounting in the aggregate to the sum of $198,496.12, in this way: 458 459

On Account of Redeemable Debt.	$128,766 12
" " Annuities.....	69,730 00
Total.....	$198,496 12

which I have the honor to report to your Excellency in answer to your aforesaid official communication, which doubtless by error bears date the fourteenth day of No-

460 vember last. God keep your Excellency many years. Havana, twentieth December, 1889. By order. José Ramon de Haro. Sign. To his Excellency the Intendente General de Hacienda. Seal in blue ink reading: (Intendencia Gnral de Hacienda.) December 26th, 1889. Entered December 26th, 1889. (Ordering a visit to be made, p. 11.) In view of the foregoing information, I order that the former Secretary and Comptroller, Francisco Lopez de Haro, Chief of Administration of the Third Class, at present Central Comptroller, pay a visit to the office of the Secretary and Comptroller of the Debt, and to inform me in detail as to the facts referred to in his decree of the twenty-first, and in the foregoing
461 report of the Secretary Comptroller, authorizing him to appoint the officer that should assist him as clerk in such call. Signed. Urzais. Signed. In compliance with the superior order from page nine to the other side of the same page, in which his Excellency, the Intendente Gnral de Hacienda, has been pleased to appoint me to pay a visit to the office of the Secretary and Comptroller of the Debt, for the purpose of informing him in detail as to the facts referred to in the Superior Decree of the twenty-first of this present month, and in the foregoing report of the Secretary Comptroller of the aforesaid Central Office, I have the honor to accept the appointment which His Excellency the Intendent-General de Hacienda, has been pleased to confer upon me,
462 and I appoint to act as Clerk in the same the Third Official of the Treasury, Hilario Gonzales, who being present here states, that he will fulfill the appointment conferred upon him. Havana, December 26th, 1889. Francisco Lopez de Naro. Signed. Havana, Decem-27th, 1889.

I, the undersigned, being present in the office, which is occupied by the Secretary Comptroller of the Debt at nine o'clock in the morning of this day, and Mr. Luis

de Oteiza Secretary and Comptroller of the said Bureau 463
being present, he was made acquainted with the Superior order of His Excellency, the Itendente General de Hacienda, of yesterday's date, and he being informed of the contents thereof, we proceeded to receive from him the following documents. *First.*—The original lists, not only of the Annuities but also of the Redeemable Debt, comprising the payment of coupons made from the first of November last to the fifth of this present month inclusive. *Second.*—The lists of the same, which comprise the payments made from the first of July of the year last past 1888, to the eighth of October of this year; and *Third.*—The files which on the date of the eighth of October mentioned were being made for the 464
payment of coupons. The aforesaid Mr. de Oteiza stated, that he was informed of the demand and in consequence thereof, he stated that he could not deliver the documents asked from him at that moment, because the Clerk in charge of the Bureau was not in the office, and that he kept them in his armoir under key, but that they would be delivered at eleven o'clock of this day, at which hour he supposed that the aforesaid Clerk would arrive at the office. By virtue thereof it was ordered that the Clerk who acts in this proceeding be present with Mr. Oteiza at the hour agreed upon and take charge of the aforesaid documents. Signed, Luis de Oteiza, Francisco Lopez de Haro, Hilario Sanchez. Signed. 465

At twelve o'clock of the same day I went to the office of the Secretary Comptroller of the Debt and the said officer being present he delivered to me, under receipts, lists of the payments of the Coupons of the Annuities and Redeemable Bonds made from the first of November last past to the fifth of the current month of December inclusive, in monthly order. He also delivered to me the list that for the same annuities and Redeem-

466 able Bonds, and in proper monthly order, correspond to the payments made from the first of July of the past year to the end of October of the current year. as well as the records which on the date of October eighth last were made up as to the payments of Coupons, to all of which I acknowledge receipt, and I certify. Havana, December 27th, 1889. Gonzalez. Havana, December 28th, 1889. Let the Secretary Comptroller of the Debt be cited to appear in person in my office to-day to comply with an act in this matter. Signed. Francisco Lopez de Harro. At two and four o'clock P.M. of the same day I went to the office of the Secretary Comptroller of the Debt to acquaint him with the foregoing order which could not be carried out, because said official was absent
467 therefrom, to which I certify. Gonzales.

I, the undersigned, being present in the Office of the Secretary of the Bureau of the Debt, we proceeded to open the office of the Secretary, and after being there, Mr. Guillermo Herrera, Second Chief of said bureau, being there stated that the Secretary Comptroller had written him a letter without date, which he received at one o'clock P. M., of this day, and in which he stated to him that by differences of opinion with the new Intendente, and on account of personal antagonism of some superior officers with others, he had resigned his position, but he did not wish the same to be known until after he had sailed, so that no explanation should
468 be asked from him by his friends, and that his enemies could not misrepresent him. The chief officer ordered that an immediate notice thereof be given to his Excellency the Intendente as to this fact, in order that he may order what he deems best. Havana, December 30th, 1889. Guillermo Herrera. Francisco Lopez de Haro. Gonzales. Sign. Immediately afterwards a communication was sent to his Excellency the General Intendente, which, literally copied reads as follows:

To his Excellency: At this moment which is two 469
o'clock P. M. I went in person to the office of the Secretary Comptroller of the Debt, in order to perform an act relative to the commission which your Excellency was pleased to confer upon me on the twenty-sixth instant, and Guillermo Herrera, the second officer of said office, being present, exhibited to me a letter signed by said Secretary, which he said was received by him at one o'clock of this day, and in which he states that he has made his resignation of the said office, and the wish that he did not desire that the said fact should be known until after he had sailed, of which fact I hasten to inform your excellency, so that in view of the importance attached to this fact, you will be pleased to 470
order what you deem most proper; stating to you at the same time, that notwithstanding the absence of said officer, the Commission continues its investigation. God keep your Excellency many years. Havana, December 30th, 1889. Francisco Lopez de Haro. To his Excellency the General Intendente de Hacienda: A true copy which I certify. Gonzalez. Immediately after the Chief Investigator made known to Mr. Herrera in his capacity of Chief *pro tem* of the Office of the Debt, that, among the lists which were delivered to the Commission, there were sixty issued in the month of November past, from which it appears that the requirements of previous formalities that are to be carried out for the payment of the interest they represent, have been taken 471
apart from the same, and, therefore, appear without any verification in all that refers to said formalities, and inasmuch as the Secretary Comptroller, Mr, Oteiza, has absented himself, and the aforesaid Lists are signed jointly by Austin Maig, as a clerk, he was requested to order that the latter should appear, so that he may make an explanation to prove the fact in question, and said Herrera being present, stated that he would comply

472 with the order, which has just been made known to him, he signed at the foot hereof, to which I certify. Guillermo Herrera. Francisco Lopez de Haro. Gonzales. Signed. Guillermo Herrera, Chief *pro tem* of the Office of the Secretary and Comptroller of the Debt, having presented himself immediately after, stated that Mr. Maig, the person whom he was requested to present before the Commission to testify was absent, in consequence thereof, the Judge Examiner ordered that any clerk or assistant of the Bureau of the Payment of Coupons should appear before him, which I certify. Gonzalez.

By virtue of the foregoing order, Adolfo del Castillo, assistant Clerk, without salary, of the Bureau of Cou-
473 pons, to whom are exhibited the Lists above referred to, for the purpose that he should state if he knew what was the reason why the documents which ought to show the proceedings followed for ordering the payment of the interest represented in said List were taken apart from them. He stated that he did not know at all the cause of the lack of the justification, or for the separation of the record that has to be previously made for the payment under the aforesaid Lists, in virtue thereof, the Chief Examiner taking into account that the payment of the coupons under the aforesaid Lists had been made under the belief that the same corresponded to the numeration posterior to the month of September,
474 1886, and he asks that the general record of liquidation of payments of the debt be shown to him, as they ought to show the issuing of the certificates, for the purpose of knowing the number of those issued, and to compare the extent of said numeration with that of the coupons comprised in the aforesaid Lists, and said record being in the offiice of the Chief of the office, it was exhibited to him for the proper purpose) which I certify. Lopez de Haro. Gonzalez. Signed. Havana, December 28th,

1889. Having examined the statement showing the 475
issue of bonds of the Redeemable Debt, and it appearing from the same that the issue made to date only reaches to the number 15,000 (fifteen thousand). Having also examined the Lists paid, which appear without legal justification in the payments of the coupons corresponding to the same, and it appearing from the said List that the numeration of the aforesaid coupons starts from 16,000 (sixteen thousand) onward, it is concluded that said coupons paid are either forged or belong to Stub Books that have not been officially legalized for the issuing thereof, and therefore let the Chief *pro tem.* of the Office of the Debt present the notes of the entry book as to stub books of certificates taken from the deposit for 476
legalization in order to prove if the stub book 16,000 (sixteen thousand) has or has not been legally taken out from the aforesaid deposit. Francisco Lopez de Haro. On the same day and hour, the foregoing notification was made. Gonzalez. Immediately after the Chief *pro tem.* presented himself, stating, after being questioned in relation to the book of entry referred to in the foregoing decree, that he has it not in his armoir, inasmuch as on the same day on which deponent took possession of the charge, he actually holds, Mr. Oteiza, the Secretary-Comptroller, carried to his private office the records and documents that he had in his armoir, leaving only the certificate books and the registry book of the same bonds, he so declares and signs, which I 477
certify. Guillermo Herrera. Gonzalez. Havana, December 30th, 1889. In view of what has been stated by the Chief *pro tem.* of the Bureau of the Debt; and considering that the stub books in question for the verification sought may be in the safe where the securities and documents are deposited, and which safe is in the private office of the Secretary of the debt. Let the Notary of the Treasury be cited, so that on the first hour

478 of to-morrow he appear therein to witness the opening and examination of the documents and securities contained in said safe; and let official communication be sent to His Excellency Intendente General de Hacienda, stating to him that the declaration of the Assistant of the Bureau of Coupons, Augustin Maig, has not been taken, because he is absent. Francisco Lopez de Haro. On the same day and hour, the foregoing citation was made and official communication was sent to His Excellency Intendente General de Hacienda, which literally reads thus: To His Excellency: I have the honor to state to your Excellency that the declaration of Agustin Maig, Assistant Clerk of the
479 Bureau of Coupons in the proceedings of an administrative character, which I am instituting in the Clerk's Office of the Debt has not been taken, because he has absented himself from his office, and he has not appeared therein up till now, which is five o'clock P. M. God preserve your Excellency many years. Havana, December 30th, 1889. Francisco Lopez de Haro. To His Excellency Intendente General de Hacienda. Gonzalez. At the city of Havana at two o'clock P. M. on the thirty-first day of December, 1889, there being present at the office of the Secretary and Comptroller of the Debt Francisco Lopez de Haro, Chief Examiner in the proceeding of an administrative character, Guillermo Herrera, Chief *pro tem.* of the aforesaid office, Carlos
480 Laurent, Notary of the Treasurer, who appears in this proceeding, he having been previously cited, and I, the undersigned Secretary, the opening of the safe of deposit which is in the aforesaid office was proceeded with, and there was taken therefrom and compared the securities contained therein, and which appear to be the following: One Stub Book of the Debt of Annuities of $5.00 Number 46,501 (Forty-six thousand five hundred and one) to 47,000

(Forty-seven thousand), with all its coupons complete; 481
One Stub Book of Annuities of $10. Number 63,001 (Sixty-three thousand and one) to 63,499 (Sixty-three Thousand Four Hundred and Ninety-nine) with all their coupons; One Stub Book of the Redeemable Debt of the Series "B" Number 19,501 (Nineteen thousand five hundred and One) to 20,000 (Twenty-thousand) with all their coupons; One Stub Book of the Redeemable Debt Series "A" No. 35,001 (Thirty-five thousand and one) to 35,500 (Thirty-five thousand five hundred) with all their coupons; One Stub Book of Annuities of $10. Number 63,502 (Sixty-three thousand five hundred and two to 63,998 (Sixty-three thousand and ninety-eight) with all their coupons; One 482
Stub Book of Redeemable Bonds Series "D" Number Nineteen thousand and one (19,001) to Nineteen Thousand five hundred (19,500) with all their coupons; One Stub Book of Redeemable Bonds Serious "C" Number 22,002 (Twenty-two thousand and two) to 22,-500 (Twenty-two thousand five hundred) with all their coupons; One Stub Book of Annuities $5.00 Number 44,501 Forty-four thousand five hundred and one) to 45,000 (Forty-five thousand) with all their coupons; One Stub Book of Annuities $5.00 Number 44,001 (Forty-four thousand and one) to 44,500 (Forty-four thousand five hundred) with all their coupons; and One Stub Book of Annuities $10. Number 62,501 (Sixty-two thousand five hundred and one) to 63,000 (Sixty- 483
three thousand) with all their coupons, all of which were replaced in said safe of deposit, taking note that the lock of said safe was and is in perfect condition. Having examined the record showing the delivery to said office made by Mr. Lopez de Haro who appears in this present act as Chief Instructor a proceeding which was signed "receipted" by the new Chief of said Office Luis de Oteiza on the eighth of October of the

484 current year, the securities were compared with those that were taken from the safe of deposit, and it appears that the complete Stub Book of Series "F" of the Redeemable Debt Number 16,001 to 16,500 (Sixteen thousand and one to sixteen thousand five hundred) with all their coupons, was missing. Having also examined the list which appear to have been paid without previous verification, or without proof of it, it also appeared that the numbers of the coupons corresponding to the said list, corresponded precisely in numbers to the Bonds corresponding to the Stub Book missing, with which this act was terminated, taking note that the key of the safe of deposit where were replaced the securities taken therefrom for verification,
485 remains in possession of the Chief *pro tem.* Senor Herrera, who signs this present as proof thereof. Carlos Laurent. Francisco Lopez de Haro. Guillermo Herrera. Hilario Gonzalez. Signed. Havana, December 31st 1889. Without prejudice to anything else that may be proper, let a communication be sent immediately to the Executive Officer of the College of Brokers, informing him of the disappearance of the Stub Book of the Redeemable Bonds of the Debt Series "F," which is not issued for circulation in the market. Let notice be given of this act to His Excellency Intendente General; and let him be informed that in agreement with an official communication of
486 this date, which the Chief *pro tem.* of the office of the Secretary of the Debt has just delivered to me, the Assistant Clerk of Bureau of Coupons, Augustin Maig, who was summoned to appear yesterday, has not been in the office, from which fact it may be supposed that under the circumstances of his being one of the parties who signed the list of coupons paid, he may have absconded. Let also a communication be sent to the Governor of the Spanish Bank asking him to send a

new statement of the coupons paid from the first of November past to the fifth of the current month of December, including the numbers of each one of the aforesaid coupons. 487

LOPEZ DE HARO.

REPORT.—*Most Excellent Sir.* From the proceedings in this case up to this date it appears that upon examination of the list of coupons paid from the 1st of past November to the 5th of the present month of December, we have found in the same list a lot to the amount of sixty, having no previous verification for payment. These lists comprise coupons, the numbers of which belong to bonds not yet issued and their stub book used to be in the safe for deposits found in the office of the Secretary Comptroller of the Debt, and it has been proven that said stub book has been taken away from the said safe; and whereas this fact by itself alone constitutes a crime punishable in agreement with the Code of Criminal Procedure, it is indispensable in the opinion of the Chief Investigator that the Courts of Justice may take cognizance of the same, to which end an integral copy of the proceedings up to this date must be sent to it, and also the aforesaid original list the bonds of which, just as the coupons, must be found in the office of the bank, as vouchers for the payment. To it must be annexed also a statement of the issue of bonds up to this date as a document justifying the fact to which reference is made. All this without preventing the continuation of the proceedings and the careful examination of all the coupons paid for whatever else may be proper, as I shall have the honor of stating to your Excellency in due time. Your Excellency, however shall decide. Havana, December 31st, 1889. Francisco Lopez de Haro. December 31st. As demanded, and be it sent immediately to the Attor- 488 489

490 ney of His Majesty. Urzais. Havana, December 31st, 1889. The most Excellent Intendente has ordered in agreement with the proposals of the Chief Investigator, to send a copy of the actuations up to this date, and in the moment of complying with such prescription, the following documents have been received from the Intendency:

1st. A copy of the communication addressed on this date by the Intendencia to the Spanish Bank in which it asks if there are in the said institution two orders from the Intendency dated the 22d of November past, and 2nd of December inst., ordering to retain certain sums for the payment of the interest of the debt. 2d. A
491 copy of the communication of the Bank to the Intendency giving an affirmative answe. about this matter and accompanying copy of the communications to which reference is made. 3rd. A copy of the communication of the Intendente to the Governor General transmitting him the preceding communication from the Bank; and 4th. A communication from His Excellency the Governor in which he states that in virtue of the foregoing communication he has ordered that the General Comptroller of the State Don Federico Prado y Castillo, shall be detained in the Civil Government of this Province and subject to the orders of the Attorney for His Majesty, because it has been found that the orders, copies of which have been sent by the Bank, are signed by said
492 Comptroller as Intendente *pro tempore*, which charge he held at that time. Therefore it is decreed that said documents be annexed to the proceedings explaining all that has been done, which are going to be sent to said Attorney on this date, the original remaining annexed to the actuations now being made. Annex also to said actuations the documents justifying the examinations of accounts practiced for retaining the sums ordered for the payment of interest, and forward also copies of the

same documents to the Attorney of His Majesty, Francisco Lopez de Haro, Mr. Hilario Gonzalez y Velasco. Third Clerk of Administration and Secretary of the special commission of the Board of Debt of which the Most Illustrious Central Comptroller of the Treasury is Chief Investigator; I do hereby certify that the preceding documents are a true copy of the original administrative Actuations which are being actually carried on on the Special Commission of the Board of the Debt. And for the end of forwarding it to the Illustrious Attorney of His Majesty, I issue these presents verified by the Illustrious Chief Investigator. In Havana on the 31st day of December, 1889. Verified. The Chief Investigator, Lopez de Haro. Signed Hilario Gonzales. 493 494

Complaint in Cuba.

Complaint. Folio 43. To the Criminal Court: The Attorney for His Majesty says; that the Intendencia General de Hacienda of this Island ordered on the 25th day of December of last year, to the Central Comptroller to pay a visit to the office of the Secretary Comptroller of the Debt, to the end that he should report whether during the month of November and the the first five days of December compliance has been given to the formalities prescribed before ordering the payment of the coupons and bonds due of the Redeemable and Annuity Debt put in circulation up to September, 1886, to the end of verifying if the holders were in legitimate possession of said documents. The Central Controller having presented himself in the said office at 9 P. M. on the 27th day of December, and Mr. Luis Oteiza, Secretary Comptroller of said Board being present, the Investigator in this proceeding asked from him: 1st. The original lists, not only of annuities, but also of the Redeemable Debt, comprising the payment of coupons made from the 1st 495

496 of November to the 5th of December. 2d. The lists of the same documents comprising the payments made from July 1st, 1888, to October, 1889. 3d. The files which on this last date were pending for the payment of coupons. Secretary Oteiza did not then make delivery of said documents, under pretext that the Clerk which kept them under key, was not in those moments in the office. On the following day, the 28th, the Investigator ordered to summon Oteiza, who was not found, and the second Chief of the Office reported that he had received on the 28th, a letter without date from Oteiza, in which he stated, that on account of differences of opinion with the new Intendente, and of personal antagonism of the Superior Chiefs between themselves, he had resigned his place; but that he desired that this should not be known until he had sailed, to the end that no friends should ask him for explanations nor any enemies misrepresent him. Immediately the Second Chief of the Junta de la Deuda, Don Guillermo Herrera, was ordered to deliver the actuations instituted about the legitimity of the coupons to which refer the 60 lists issued in the month of November, and he stated that Mr. Oteiza was occupied in this work, together with the clerk Don Agustin Maig, who can give explanations about this matter. From the investigation made in search of Maig, it appeared that he had also absconded, and the auxiliary clerk of the Bureau of Coupons Mr. Adolfo del Castillo, stated that he did not know why the files about the justification of the legitimity of the coupons had been taken apart and were wanting. In the general record of the liquidations of payments of the Debt, it appears that the issue verified up to date reaches only No. 15,000 and the numbers of the coupons paid without justification, by virtue of the sixty lists seized, begin with the number 16,000 and thence forward. From the examination made by

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the Chief Investigator in the Safe of Deposits in the Board of the Debt, it appears there is wanting a complete Stub Book of the Series "F" Redeemable No. 16,001 to 16,500, with all its coupons, from which all those which were due, were collected at the Spanish Bank, as is proven with the sixty lists to be found in the administrative proceedings. Therefore it is perfectly proven that there is a malversation of public funds, punished by Section 4th of Article 401 of the Penal Code for the amount of $100,000, in which amount we cannot include at present the value that the bonds contained in the stub book, substracted may have, because that does not appear in the Administrative proceedings. There appears criminal responsibility for this crime against the officer of the Bureau Don Agustin Maig, the Secretary Comptroller Don Luis de Oteiza and the Intendente General de Hacienda Don Federico Prado, and the bearers of the coupons and lists Messrs. A. Andrade F. Valdes and J. Remus, all as authors, as they took part in the execution, the first two proposing the payments of the coupons, which was ordered by the said Prado, and realized by the last three. It appears also proven, as to Mr. Luis de Oteiza and Agustin Maig, that they have committed the crime of abandonment of public office, specified in Artcle 383 of the Penal Code. The Court must be pleased to admit the present complaint and order the arrest of Messrs. Luis Oteiza, Agustin Maig, A. Andrade, F. Valdes and J. Remus, issuing to this end the proper communication to the Govermental authorities. Furthermore, Mr. Federico Prado is actually arrested in the Civil Government of this Province, since 6 P. M. of the day of yesterday for this fact and by order of the Governor General, who placed him at the disposal of the Attorney, and now remains subject to the disposition of the Court. I beg the Court to consider this

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502 statement as made. Furthermore, the attorney proposes procedure for evidence :

1st. To demand from the Spanish Bank, the original coupons and covers, of which those appearing in the administrative proceeding are only second copies. 2d. Te receive instructive depositions from the accused parties. 3d. To make a search in their residences taking possession of whatever may contribute to the discovery of the facts. 4th. To examine the employes of the office of the Secretary of the Board of the Debt. 5th. To claim from the Intendencia, the actuations in which Mr. Federico Prado, ordered the Spanish Bank to pay respectively one hundred thousand and ninety thousand dollars, for interest on the debt on
503 November 22d and October 2d last. 6th. To ask from the Spanish Bank the communications that with said object were addressed to it by the Intendente Mr. Prado. 7th. To receive a deposition from the Ship Inspector Mr. Aquiles Solano. 8th. That the Manager of the firm, consignee of the steamship "Olivette" may report if Mr. Luis Oteiza, sailed for the United States on the 28th of last December. 9th. To ask information from the Intendencia whether Oteiza and Maig have departed with proper leave, or because their resignations have been accepted. I beg the Court to order that all those measures be taken. Furthermore, this Court is competent to take cognizance of those crimes in accordance
504 with Section 3d, Article 4th of the Additional Organic Law, because the accused party is Mr. Federico Prado, Administrative Authority of this Province. I beg the Court to consider this statement as made. Furthermore the Attorney exhibits the Administrative proceedings that it may appear as commencement of the process. Furthermore the Court please appoint the Magistrate Investigator in this process. Havana, January 1st, 1890. P. S. Maya, His sign.

Warrant of Arrest in Cuba.

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DECREE.—Havana, January 1st, 1890. Whereas it appears that the attorney for his Majesty has presented a complaint against the late Intendente General de Hacienda *pro tem.* of this island, Mr. Federico Prado and Messrs. Luis Oteiza, Agustin Maig, A. Andrade, F. Valdes and J. Remus for the crime of malversation of public funds and abandonment of public offices in regard to Messrs. Luis Oteiza and Agustin Maig. Whereas it appears from the annexed proceeding annexed by the attorney to his complaint, that upon his examination made by the Chief Investigator of the Safe Deposit of the Board
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of the Debt, it has been found that there is missing a complete Stub Book of the series "F," from numbers 16,001 to number 16,500, with all its coupons, and that the said coupons which were due have been collected at the Spanish Bank, as it appears proven by the sixty lists found in the administrative proceedings. Considering that the acts denounced by the attorney have all the characters of the crimes of malversation of public funds and abandonment of public office specified in Articles 401 and 383 of the Penal Code; Considering that in accordance with section 3 of Article 4 of the Additional Organic Law this Court is competent to take cognizance of the criminal proceedings against the administrative authorities of these provinces; This Court
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declares itself competent for instructing this process and taking cognizance of the same. The late Intendente General de Hacienda *pro tem.* of this island, Mr. Federico Prado, Mr. Luis Oteiza, Mr. Agustin Maig, Mr. A. Andrade, Mr. F. Valdes and Mr. J. Remus, are declared to be prosecuted and subject to the results of this process. An extension of seventy-two hours is given to the arrest to which Mr. Federico Prado has been sub-

508 ject and for that purpose let a communication be sent to the Civil Governor of this Province to the end that which is ordered may be complied with in the corresponding place, be it urgently demanded from the Spanish Bank of the Island of Cuba, the coupons and original covers which appear in duplicate copies in the administrative proceedings; let instructive depositions be taken from the prosecuted parties and a search be made in their respective residences, taking possession of whatever may be conducive to the elucidation of the facts. Let the employees of the office of the Secretary of the Board of the Debt be examined about the proper matters. Ask urgently from the Intendencia General de Hacienda, the proceedings in which Don Federico
509 Prado ordered the Spanish Bank to satisfy $100,000 and $90,000 respectively for the payment of interest of the debt, on November 22nd and October 2nd last: Ask from the Spanish Bank the communications that to this end were addressed to it by the Intendente, Mr. Federico Prado; take deposition from the Inspector of Ships, Mr. Aquiles Solano; let the manager of the firm, consignee of the steamship "Olivette," report whether Mr. Luis Oteiza sailed for the United States on the 28th of last December; ask the Intendente General de Hacienda to report whether Oteiza and Maig have absented themselves with leave, or because the resignation of their charges has been accepted; the arrest of Mr. Luis
510 Oteiza, Agustin Maig, A. Andrade, F. Valdes and J. Remus is hereby ordered, and to this end let the proper communications be issued, and report to the President of the Court for the appointment of the magistrate in turn for the institution of the criminal proceedings. So was ordered and signed by the honorable gentlemen on the margin. Eugenio Sanchez Fuentes. Aniceto de Palma. Antonio A. Ecay. Three signs. L. Elpidio de los Santos. TURN: Havana, January 1, 1890. The

magistrate, Aniceto de Palma, is appointed, as he is in turn. Signed by the Illustrious President of the Court. 511

INSTRUCTIVE DEPOSITION: 54. At the city of Havana, on the 1st day of January, 1890, the Instructing Magistrate, Mr. Aniceto de Palma, assisted by me, appeared in the Civil Government of this Province and summoned before his presence a prisoner, who stated that his name was Federico Prado y Castillo, to whom his Honor remembered the duty which he had of answering in a manner precise, clear, and in agreement with the truth to the questions about to be asked from him, and he promised so to do, and deposed as follows: Questioned about his personal circumstances, he said that he is called Mr. Federico Prado y Castillo, 47 years old, married, employee, born in Toledo, resident of Havana, son of Mr. Placido and Mrs. Rafaela; that he is decorated with the star of "Military Merits," is a Knight Commander of the order of "Ysabel la Catolica," and does not belong to any Military Institute, and has been prosecuted and acquitted in a criminal cause for defraudation. Questioned, who arrested him, at what time, and for what cause; he answered that he was arrested by the Civil Governor by order of the Governor General, and placed to the disposition of the Attorney for his Majesty, and that he believes that the cause is a defraudation recently discovered in the Board of the Debt. Questioned, whether he has acted as Intendente General de Hacienda of this island, for what cause and for how long a time, he said, that it is true that he has held this charge by reglementary substitution as Interventor General of the State from the 7th of October to December 5th last. 512 513

Questioned, after exhibiting to him the 60 copies of lists of payments of coupons, belonging to the Redeemable Debt, whether during the time he was in charge of the Intendencia, he has authorized and ordered the pay-

514 ments of the original copies to which they refer, he said that he remembered having authorized the payment of lists of coupons equal or similar to those exhibited, without being able to affirm that they were the originals of those now exhibited to him, and that as to ordering said payments he believes that the authorization at the foot of the proceedings for payments of the Office of the Comptroller of the Debt, is not an ordering act, as shown by the fact that the first part of the signature reads "El Intendente General de Hacienda" and not "El Ordenador General de Pagos," as is stated in all the warrents that he issues as "Ordenador de Pagos." Questioned which is the course followed in the examination and payment of the coupons in the Board of the
515 Debt, and to explain what is his intervention in it, he answered, that his intervention in this matter is limited to authorize the list prepared by the Comptroller of the Debt, for the purpose of completing the personality of the comptroller, whose warrants shall not be obeyed by the bank in default of such requirements. As to the course followed he states that after the interested party has presented in the office of the comptroller of the Debt, the list or lists with the coupons annexed to it, they are sent to the respective Bureaus, which, as he believes is called Bureau of Coupons or Verification, where, after their legitimity under all respects is verified, summary proceedings are instituted
516 in which are stated the verification and its results, and whether it is or not legal to pay its amount. These proceedings are approved by the Comptroller of the Debt, and the rights produced by such approval is written on the back of the list; the object of these proceedings be ing to secure the clerk of the bureau to which it refers and the said comptroller; after being authorized in the proper place, these proceedings are taken to the bank for compliance, that is for the payment of the coupons

embraced in the list. Questioned, after exhibiting to 517
him the said copies of the lists if he can explain the manuscript words with which are ended the lists on folio 21, 41, 61, he said, that his interference as Intendente, ceases in the very moment in which he signs the printed warrant of payment which is found on the back of the list, and that this is the only intervention of the Intendente in the proceedings for verification and payments of coupons ; and that he believes that the manuscript words with which end the three before mentioned lists may be the heading of the proceedings of verification, which are made in the office of Secretary of the Board. Questioned, whether he knew that in the Safe Deposit in the Office of the Sec- 518
retary of the Debt there were stub-books of Bonds with the requirements necessary for making the payment ordered by the Board, he answered, that he does not believe it, because when such stub books have all the conditions required to be considered as Public Bonds, because they have the signature and further legal conditions, they are sent to the General Treasury where they are kept in custody, and payments are made with them by said bureau, that he is aware that some stub-books to the bonds of which has been set the stamp of Governor General Callejas were in the office of the secretary of the board, because it had not been possible to obtain the signature of Mr. Olivares, who at that time was the Intendente, and it was not possible that 519
they should be signed by another person ; that he believes that the Government was consulted about what should be done with them, and that the Government ordered to cancel them ; and that he has been informed that during the absence of the deponent in the Peninsula, in the time of Mr. Arellano, some of them were burnt. He has also heard to state that in other stub-books, the bonds were cancelled, and he does not know

520 if the coupons were cancelled also. Questioned whether he knew, either as Intendente or as Interventor General del Estado, the number corresponding to the last bonds issued, he said that as Intendente he does not know it, and that as Interventor, notwithstanding his multiplied exertions he made to obtain from the Board of the Debt all the data and precedents required for establishing the Fiscal Accountability, he has not been able to obtain anything exact and concrete, and he knows not the numbers of the last bonds issued. Questioned whether he has had any notice that the coupons had been cut out from the bonds ordered to be cancelled, which were under the custody of the Secretary of the Debt, he answered no, and he affirms it under his word
521 of honor. Questioned if he is acquainted with Mr. A. Andrade, Mr. F. Valdes and Mr. J. Remus, he answered, that he knows them not. On this stage of the proceedings, he stated that he desired to represent to the Court, that in his opinion the rules of the Administrative proceedings to which he ought to be submitted, before being subjected to a judicial proceeding, had not been complied with, because the answers that he could have given in such proceedings could have prevented the actual situation, because he repeats that he believes that the Administrative resolution ought to have preceded as a previous question. I must here make known that all the proceedings took place with the assistance
522 of Mr. Ricardo Maya, Attorney pro tempore for His Majesty. This deposition, which occupied two hours and three quarters, was declared ended, without prejudice of continuing it when necessary and having read it to the deponent, who waived his right to read it, he ratified it and signed with the Magistrate Instructor and the Attorney for His Majesty, to all of which I do hereby certify. Palma. Maya. Fedo. Prado. L. Elpedio de los Santos. Four signatures.

Official Note, page 63. Intendencia General de Hacienda of the Island of Cuba, No. 60. *Illustrious Sir.*— In view of your communication dated yesterday, asking with all haste to transmit the proceedings in which Mr. Frederico Prado ordered the Spanish Bank to satisfy $100,000 and $90,000, respectively, for the payment of interest of the debt, on the 22d of November and 2d of December last, a certified copy is annexed of all what about this matter has been sent to me, on this date by the Chief Investigator of the Administrative proceedings followed by a Special Commission in the Board of the Debt. May God preserve your Excellency for many years. ANGEL URZAIS. (Signed.) Havana, Jan'y 2d, 1890. Copy, folio 64. Havana, Jan'y 2d, 1890. The Commission having met in the office of the Secretary-Comptroller of the Debt, and the accidental chief of the same being present, he was notified to bring to the same bureau the docket of proceedings in which Mr. Federico Prado ordered the Spanish Bank to satisfy $100,000 and $90,000 respectively, for the payment of interest of the debt, on November 22d and December 2d last, and as he stated that the proceedings to which reference is made must be kept in the Armoir of the Bureau of Coupons, under charge of Mr. Agustin Maig, who has disappeared, the Commission in union with said accidental Chief, went to the Bureau of Coupons, and it was opened in his presence and in the presence of the said accidental Chief, and a careful search and examination was made of all the documents found in said armoir, and in the drawers of the desk of said bureau, and among them were not found any of the dockets of proceedings asked by the first part of the Criminal Court, referring to the orders by which Mr. Federico Prado directed the Spanish Bank to satisfy $100,000 and $90,000 respectively, for the payment of interest of the debt, on the 22d of November and 2d of December last.

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526 The only thing found was a docket of proceeding marked with No. 29, referring to a communication of the Intendencia relating to the submission to the resolution by it, of the proceedings, that in each case should be instituted for payment of coupons of bonds issued previously to the month of September, 1886. Said proceedings are composed of the communication of the Intendencia already referred to, of August 27th, 1889, and the minutes of acknowledgment of reception to the Intendencia by the Secretary Comptroller of the Debt, on September 21st following: The Chief Investigator ordered the Commission to take charge of said proceedings, on account of the direct relation it has with the process followed by it, for investigating the payment of
527 said coupons. The Commission accompanied by said accidental Chief having returned to the said office of the Secretary of the Debt, the Chief Instructor ordered to practice a search and examination of all the documents found in the desk of the Chief of the Office, in the pigeon-holes used by the same as a part of his furniture, and in all the other shelves existing in said place, and the examination was practiced without any success; therefore the Chief Investigator ordered that said accidental Chief should call before him all the employés of the Bureau, to investigate if they had any knowledge about the proceedings referred to and whatever may refer to this matter, for the purpose to ascertain their
528 whereabouts. The aforesaid accidental Chief called and made appear before the Commission, Messrs Luis Flaquer, Aurelio Tosta, Rafael Gonzalez de la Vega, Juan de la Cruz Portela, Vicente Morel, Manuel Garcia and Ignacio Gracia, who, after being questioned about the matter, stated that they had neither knowledge nor notice of any kind about the aforesaid proceedings, because all dispositions about the same, were taken directly by the Chief of the Office together with the Intendente,

and there was no system for carrying an index of the 529
said orders nor for filing the proceedings on the records.
This act was considered as concluded and the said acci-
dental Chief signed with the Chief Investigator and the
Secretary who certifies it, Guillermo Herrera, Francisco
Lopez de Haro, Hilario Gonzalez, Don Hilario Gonzalez
y Velasquez, 3rd Clerk of Administration and Secretary
of the Special Commission of the Board of the Debt of
which Illustrious Francisco Lopez de Haro, Contador
Central de Hacienda, is Chief Investigator, I do hereby
certify that the preceding minutes are a true copy of the
originals found in the Administrative proceedings which
has been instituted in the Board of the Debt by the
Special Commission and for the purpose of transmitting
it to the most Excellent Criminal Court Audiencia, by 530
virtue of the communication of the same, dated on the
day of yesterday, I issue these presents, verified by the
Illustrious Chief Investigator in Havana, on the 2nd
January, 1890. Verified, The Chief Investigator, Fran-
cisco Lopez de Haro, signed—Hilario Gonzalez—signed.
A seal in blue ink reading "Intendencia General de
Hacienda, January 2nd, 1890." Forwarded. Decree.
Folio 67. Issue a communication to the Intendencia
General, for the purpose that it may state whether, when
payments are ordered the documents carry before the
subscription, the words "Ordenador General de Pagos"
instead of "Intendente General de Hacienda." What
course is taken for the examination and payments of 531
Coupons in the Board of the Debt, and what is the
interference of the Intendente in it, and when does it
cease. If in the Indexes of business despatched
by the Intendency, can be found three proceed-
ings of verification of lists of payments of coupons,
the first having twenty sheets, under the name of
A. Andrade, each for the amount of $2,300, another 20
in the name of F. Valdes for the sum of $650 each, and

532 another 20 in favor of J. Remus for the sum of $2,050 each, and if in the Record or Entry Book appears registered the course which the said proceedings took, and which was the last or final resolution taken in the matter; if in the Safe for Deposits of the Secretary of the Board of the Debt are found stub books of bonds with the requirements necessary for making the payments that the Board may order; if said stub books were cancelled, in virtue of what orders it was made, who cancelled them? and if not only the bonds, but also the coupons were cancelled. If the Intendente General is precisely bound to know the numbers of the bonds of the debt which are issued and placed in circulation, and if it is proven that Mr. Federico Prado, as Inter-
533 ventor, has made efforts to obtain from the Board of the Debt all the data and precedents required for establishing the fiscal accountability. Let notice be sent to the Governor-General that it has been resolved to arrest and proceed criminally against Mr. Federico Prado, Mr. Agustin Maig, and Mr. Luis de Oteiza. Let the Governor of the Spanish Bank of Cuba be reminded of the communication issued under the date of yesterday, requesting its quick return, because the documents demanded are the "*Corpus Delicti*" prosecuted, and there is a person arrested. Investigate the penal precedents of Mr. Federico Prado, Mr. Luis Oteiza and Mr. Agustin Maig. The Judge of Instructions of the East-
534 ern District, Mr. Elpidio Abril, is commissioned to practice the searches ordered in the houses of Prado, Maig and Oteiza, which are the only persons whose names and residences are known up to this date. Summon the witness, Mr. Aquiles Solano. Send a communication to the Intendente General de Hacienda, in order that he may state who are the employés in the office of the Secretary of the Bureau of the Debt, expressing their names and their residences. So was ordered by

the magistrate, Mr. Aniceto de Palma, Judge Instructor, 535
commissioned to take cognizance of the present process, as I do hereby certify. A. de Palma. Emilio Valdez y Valenzuela. Two signatures .....Official communications (fol. 70).

Most Excellent Sir.—This Intendencia, considering that it may be necessary in the process to know in an official manner the departure from this island of Mr. Luis de Oteiza y Cortez, Secretary Comptroller of the Board of the Debt, I have the honor of sending to you copy issued by the Secretary of the Central Office, of the communication dated December 31st, which, in answer to another addressed by me, was sent to me by His Excellency the Civil Governor of this Province. 536
May God preserve your Excellency for many years. Havana, January 2d, 1890. Angel Ursais. There is a seal reading: "Intendencia General de Hacienda de la Isla de Cuba;" January 2d, 1890, transmitted. Intendencia General de Hacienda de la Isla de Cuba. Copy, folio 71. Civil Government of the Province of Havana. Public Order and Police. 14,036. 370. Intendencia General de Hacienda. December 31st, 1889. Entered December 31st. File it and send to the Secretary and to its proceedings. B.O. Barcena. Excellent Sir: The Inspector of Police for the examination of Ships to whom I sent for information your favored communication of this date, No. 9681
228, relating to departure for the United States of Mr. 537
Luis Oteiza, states to me as follows: Most Excellent Sir: In compliance with what your Ex'y prescribe in the superior decree found on the margin of the paper which I have the honor to return to you, it is my duty to inform you, that Mr. Luis y Cortes, who sailed from this port on the 28th of the present month on board the American Steamer "Olivette" was allowed to sail because he had complied with all the requisites prescribed

538 by the legislation in force about the matter. He was provided with his personal Police papers which showed the corresponding leave for the United States given by the Alcalde of the Ward of San Felipe on the 27th inst., and in view of these precedents, and as there was no injunction against his departure, no impediment was placed against his sailing. It appears from the information asked from the Alcade of the Ward that he authorized the said papers, without obliging him to exhibit other documents than the certificate of exemption from Military Service. And I have the pleasure of transmitting the same to you as the result of the aforesaid communication. May God preserve your Excellence for many years. Havana, December 31st, 1889.
539 C. Rodriguez Batista. To His Excellency, the Intendente General de Hacienda. True copy, S. Barsena. Signedo.

OPINION.—To the Magistrate Investigator in the cause about malversation. The Attorney says that the following facts, which doubtless have relation with this cause, have become known to him through trustworthy channels. 1st. That a Broker bought on Saturday, 28th of December last a transfer by cable for a large amount in favor of Mrs. Francisca Cortes, a resident of Claudio Coello street, No. 16 Madrid, and said lady is the mother of Oteiza who is prosecuted. The said transfer was made either by the house Gelats and Company, or
540 that of Hidalgo and Company. 2d. That on the 10th of December, a certain Mr. Andrade, who is perhaps one of the prosecuted parties, bought of the house of H. Upman and Company, a draft for one thousand pounds (£1,000) for account of Oteiza. 3rd. That on the 3rd of the same month Mr. Andrade bought in the house of Gelats and Company, and in favor of Mrs. Francisca Cortes, a transfer by cable for five hundred dollars ($500). The Attorney proposes to the Court that it may go to-

day to the houses of Gelats, Hidelgo and Upman, to in- 541
vestigate such facts, and if it appears that they are exact, to address rogatory letters by cable and through the general government to the Senior Judge of Madrid to the end that he may inquire it said drafts have been collected and by whom. And in case that they have been collected by the said Francisca Cortes, to order her to deliver immediately the sums received, and should she not do so, to arrest her, as the ancestors assume responsibility as receiver of stolen goods, when they get any benefit for themselves or help the delinquents to get benefits from the effect of the crime. Furthermore, ascertain in Madrid from the commercial firm of Ojero the sums paid to Mrs. Francisca Cortes proceeding 542
from this city. I beg the Court that this point may be included in the telegraphic rogatory letters. Havana, January 3rd, 1890, P. S. Mayas.

COMMUNICATION, folio 76.—Governor General of the Island of Cuba. The Consul General of our nation in New York, in a cablegram just received, says to me: "Oteiza just arrested, he says he is innocent;" and I transmit the same to you for information and other ends, recommending you also to order that an authenticated copy be made in all haste of the pertinent parts of this process in the form prescribed by the treaty, to the end of presenting without loss of time the corresponding demand for extradition. God preserve your
Excellency for many years. Havana, January 3rd, 1890. 543
Salamanca. To the Honorable Magistrate Mr. Aniceto de Palma y Lujan: Deposition, page 78. In the city of Havana on the third day of January, 1890, before the Honorable Judge of Instruction, with the assistance of the attorney pro tem. and of myself the undersigned secretary appeared, Mr. Aquiles Solano y Granados to whom His Honor gave warning about the obligation he has of being truthful, and informed him of the penalties

544 with which the Code punishes the crime of a false witness in a criminal cause, and after being sworn in due legal form, he says, that he is called Aquiles Solano y Granados, of 37 years of age, married, Pilot Inspector of examination of ships, resident of this city and dwelling at No. 2 Jesus Maria street, that he is acquainted only with the prosecuted parties, Oteiza and Prado, being also acquainted with the attorney, has never been in prison or prosecuted, and is a native of the city of Havana. Questioned if on account of being inspector he has noticed that any of the parties prosecuted in this process has sailed, and in what ship, going whence, and on which day he sailed, he answered, that he knows that on the 28th of last month Mr. Luis Oteiza y Cortes
545 sailed in the steamship Olivette, bound for Tampa and with a ticket for New York, marked with number 2008, provided with the corresponding police paper, and he authorized his departure, because it has not been forbidden and the deponent had no news of his being indicted.

Questioned if he had notice of the decree ordering the submission to a criminal proceeding of the prosecuted persons who have been mentioned, he said, that on Monday, the 30th of December, he has been informed by the Civil Government of the Province that Mr. Luis Oteiza had absconded, and that he assured to said authority that he should be undoubtedly captured in
546 the United States, by giving to the Government all notices for attaining said object, among which the number of the ticket that the consignee house delivered to him (Oteiza) for sailing ; and that he can also state that according to his information Oteiza has been detained in New York on this very morning. Questioned if he has official information of the departure of Mr. Luis Oteiza, he answered, that he has such official information—that all ships carrying passengers send to the office of depo-

nent a declaration or statement of the tickets sold and 547
to what names, and the police documents whereby said tickets have been issued; that said statement is used for examining the books of interdictions, in order to see if among such passengers is found any one that may be interdicted, and at the same time to see if the permissions for sailing have been presented and all the requirements prescribed by law have been complied with. Afterwards he goes on board with said list, which is employed in comparing it with the notes taken by the guards watching the persons going on board; and that in regard to Oteiza, his departure was authorized in full form by the Alcalde of the Ward of San Felipe. The intimations of Article 446 of the Law of Criminal Pro- 548
cedure were made to the witness and after this deposition was read by me to him at his own request, he signed after his Honor and the attorney, as I do hereby certify. Palm. Maya. Aq. Solano. Emilio Valdes y Valenzuela.

DEPOSITION, page 30.—In the city of Havana, of the 3rd day of January, 1890, the Court, assisted by me, appeared in the house, No. 108 Aguiar street, dwelling of Messieurs N. Gelats & Company, and Mr. Narciso Gelats y Durall being present, his Honor warned him of the obligation he has of being truthful, and informed him of the penalties with which the Penal Code punishes the crime of false witness in Criminal Procedure, and after being sworn in due legal form, he said, that 549
his name is Narciso Gelats y Durall, 44 years old, a native of Catalonia, married, merchant, dwelling at 108 Aguiar street; that he knows by sight as public employees and private persons the parties which he has been told are prosecuted and whose names have been said to him and only Messrs. Prado and Oteiza in their official character, and because deponent is himself an employee as a member of the Board of the Debt;

550 that he knows Andrade and does not remember if he knows the other parties, and that he has never been in prison or prosecuted. Questioned whether, on the 28th of December last, he made through his firm any transfer by cable in favor of Mrs. Francisca Cortes, resident in Madrid, No. 16 Claudio Coello street; who was the buyer of the draft (*sic*) and which was the amount of the same, he said that on such day he made no transfer by cable in favor of said Mrs. Cortes. Questioned if on the 3d of the said month of December, Andrade bought a transfer by cable for five hundred dollars ($500) in favor of said Mrs. Francisca Cortes, he answered, that it was so, and against Mr.
551 Policarpo Pastor Ojero, merchant of Madrid, No. 10 Montejos street, second story. Questioned what amount he transferred by cable on Madrid on the 28th of December he answered, that he made one transfer for seventy-seven thousand dollars ($77,000) gold, through the broker Mr. Jacobo Sanchez Villalba, and that he made no other transfer to that market on such day. Questioned if he knows whether such transfer has been paid in Madrid, he answered, that the transfer of December the 3d for five hundred dollars (500) was collected by Mrs. Francisca Cortez, as shown by the receipt which he exhibits. The intimations of Article 446 of the Code of Civil Procedure were made to the witness, and at his request these depositions were read to him
552 by me the secretary, and he signed after his Honor and the attorney, as I do hereby certify. Palma. Maya. Narciso Gelats. The Secretary, Emilio Valdes Valenzuela. Four signatures.

RECEIPT, folio 81st, back.—I do hereby certify that the receipt exhibited reads: "I have received from Mr. Policarpo Pastor Ojero, the sum of $500, for order and account of Messrs. N. Gelats and Company, of Havana, and for his security I sign this present in

triplicate for a single effect, Madrid, December 5th, 1889. Francisca Cortes, signed. Amount $500." And in compliance with what has been ordered I extend this certificate on the 3d day of January, 1890. Emilio Valdes y Valenzuela. 553

DEPOSITION, folio 82d back.—In the city of Havana on the 3d day of January, 1890, the Court attended by me, appeared at the house No. 3 Amargura street, office of the company, "H. Upman and Company" to whom his Honor warned of the obligation in which he was to be truthful and informed of the penalties with which the Penal Code punishes the crime of false witness in criminal procedure, and after being sworn in due legal form he says: That his name is Juan Runken, a native of Germany, resident of No. 41 Dragones street, married, merchant, thirty-eight years old; that he does not know the prosecuted parties, whose names have just been told to him, and that he has never been in prison or prosecuted. Questioned if on the 10th day of last December Mr. A. Andrade took from his firm a draft of one thousand pounds (£1,000) for account of Mr. Luis Oteiza be answered; that on the 9th of said month, and not on the 10th, as stated in the question, a certain Andrade, whom he does not know, took from his house five drafts of two hundred pounds (£200) each, at sixty days on London, to the order of Francisca Cortes, and payable by the London Joint Stock Bank, London. The intimations of Article 446 of the Code of Criminal Procedure were made to the witness, and after this deposition was read to him at his request, deponent signed after his Honor and the attorney as I hereby certify. Palma. Maya. Juan Runken. The Secretary. Emilio Valdes Valenzuela. 554 555

INTERLOCUTORY DECREE, folio 83—Havana, January 3d, 1890.—Let the Court appear once more in the office of the firm of Mr. Gelats, for the purpose that he may

556 amplify the deposition he has made, and also for receiving the deposition of the broker, Mr. Jacobo Sanchez Villalba. Signed, Emilio Valdez Valenzuela.

DEPOSITION FOLIO, 83d back.—In the city of Havana, on the 3d day of January, 1890, the Court, assisted by me, appeared in the commercial office of Mr. Gelats, and said gentleman being present, his general qualifications being already known, after being duly sworn his deposition was amplified in the following points: Questioned tioned to state who bought the draft of seventy-seven thousand dollars ($77,000) to which he has referred in his deposition of this date, in favor of whom it was made, on what market and against what firm the transaction was made, he said: That he presents and ex-
557 hibits a card reading thus: "Transfer by cable $77,000 Bernardo Villamil, Mr. Antonio Munoz Romero, at 2¾ per cent. premium, J. S. Villalba," and between lines, "Stock exchange Agent," and I returned to him such document after signing it. Questioned in what coin was made the payment of said transfer, he answered that in gold bills of the Spanish Bank and a small part in gold, he not being able to specify it because he did not receive it personally, but that just now his cashier has informed him that Broker Vallalba delivered to him the following money: 34 bills of $1,000, 445 of $100, 20 bills of $50, which together amount to $79,500, to pay with them the $77,000 of the transfer, $2,117.50 for exchange
558 and $11.57 charges of the telegraph, making a total $79,129.07, and the cashier returned the difference between the sum delivered by Broker Vallalba and the amount of said account, and the cashier is called Don Felipe Mons and resides in this house. This deposition was read by me to deponent, he having waived his right and signed with his Honor and the attorney, as I do certify. Palma. Maya. Narciso Gelats. Emilio Valenzuela.

DEPOSITION FOLIO, 84 back.—In the city of Havana, 559
on the 3d day of January, 1890, the Court was opened in the house of Mr. Gelats, on account of the accidental arrival of Broker Villalba; he was called, and being present, His Honor warned him of the obligation he has of stating the truth, and informed him of the penalties with which the Codes punish false witnesses in criminal prosecutions, and after being sworn in the legal form he says: that he is called Jacobo Sanchez Villalba, a native of Cadiz, dwelling in 34 Bernaze street, married and in business, that he has never been in prison or prosecuted, and having been informed of the names of the prosecuted parties to the end that he states if he knows them, he stated that he knows Mr. Prado by 560
sight, and is personally acquainted with Messrs. Oteiza and Andrade, and does not know the other parties that have been named to him. Questioned if, as General Broker, he has taken on the 28th of December last a transfer by cable on Madrid, from what firm, against what firm, in favor of whom, and who the person was who asked him for said transfer, he says, that on the 27th of last December in the afternoon, Mr. Luis Oteiza came to the lower story of the house of Mr. Hidalgo, where deponent has his office, and in presence of different persons, whose names he does not remember at this moment, but he will investigate it and inform the Court, and charged him to get a draft of fifteen thousand pounds (£15,000) in five bills of three thousand pounds 561
(£3,000) to the order of Mr. Bernardo Villamil, Stock Exchange Agent, value received from Mr. Antonio Munoz Romero; he told him also that said sum proceeded from a testamentary, and that he wanted said drafts for Saturday at nine o'clock; and that on said day, the 28th, he came at 9 A. M. with the money and told him that instead of sterling he wanted a transfer by cable on Madrid; that deponent took such transfer from the

562 house of Messrs. Gelats and Company, to the aforesaid order and value and against Messrs. Pastor Ojero of Madrid, and that he received from said Mr. Oteiza 34 bills of $1,000 each, 445 bills of $100, and 20 bills of $50; that the delivery by Oteiza to deponent of the package containing the bills was made in presence of Don Jose Infanto, who has his office in the house of Hidalgo and of other persons which he shall investigate as he has offered before; he was informed of the intimations contained in Article 446 of the Code of Criminal Procedure; this deposition was read to him, he having waived the right to read it and having found it in conformity, he signed after His Honor and the Attorney,
563 as I do hereby certify. Palma. Maya. J. S. Villalba. Emilio Valdes Valenzuela.

DEPOSITION, folio 87.—In the City of Havana on the 3rd day of January, 1890. The Court being in the house of Gelats, the cashier of the same appeared and having been informed of the obligation he has of being truthful and the penalties with which the Penal Code punishes the crime of false witness in criminal proceedings, having offered to say the truth under the oath he took in due legal form, he says: That he is called Felipe Mons Zorrondegui, a native of Biscay, dwelling in this house, unmarried, employé in commerce, has never been in prison nor prosecuted; and having been told the names of the
564 parties prosecuted in this cause, he says that he knows none of them. Questioned if as Cashier of this Company he collected the amount of the cable transfer bought by the Broker Sanchez Villalba on the 28th of December last, he said; that said Broker delivered to him, on the said day, a certain large amount of money in payment of a telegraphic transfer, in favor of Mr. Bernardo Villamil, Stock Agent of Madrid, and that the said sum was composed of 34 gold bills of the

Spanish bank of the denomination of $1,000 each, of 565
445 bills of $100 each, and of 20 bills of $50. The proscription of Article 446 of the Code of Criminal Procedure were made known to him, and after I the Secretary read to himt his deposition, he having waived the right to read it himself and being in conformity, he signed after His Honor and the Attorney, as I do hereby certify. Palma. Maya. Filipe Mons. Emilio Valdes Valenzuela.

DEPOSITION, folio 87th back :—In the City of Havana on the 3d of January, 1890, the Court was held in the office of the Secretary of the Board of the Debt and Comtproller, and Mr. Jose Marcos Llera, Secretary Comtroller of the Board of the Debt, by reglementary substitution, being present, he was directed to exhibit the 566
Book of Minutes of Receipts and Deliveries, and he exhibited the Book from which it appears that under date of October 8, 1889, Mr. Francisco Lopez de Haro, delivered this Bureau to Mr. Luis Oteiza under an inventory in which is found, in the Schedule of Books of Final Bonds or Titles of the Debt, which are kept in a box, placed in the office-room of the Comptroller, a book, Series "F," for the amount of $1,000 each Bond, comprising the numbers from 16,001 up to 16,500 of the Redeemable Debt; and in the columns of observations there is a note, stating that the said Bonds and Coupons are perforated with the Stamps of the Most Excellent Messrs. Callejas and Olivares. The Secretary 567
having directed to open the box and show the contents of the same, he did so, and from the search practised it was found that the Stub Book Series "F" of the stated number, was not in the box; having been asked to give information whether minutes are drawn when any burning of Bonds is made, the said Secretary stated, that the burnings are made with the intervention of all the Chiefs, and that the Notary of Finances draws

568 the minutes, and that he can assure that since the date on which Mr. Haro handed over the Secretaryship of the Board of the Debt to Mr. Oteiza, no burning of Bonds of the said Board of the Debt has taken place. This deposition having been read by me the Secretary and having been found in conformity, the Secretary Comptroler signed it after His Honor and the Attorney, as I do hereby certify. Palma. Maya. Jose de M. Llera. Emilio Valdes Valenzuela.

PROCEEDINGS, folio 89.—On the same date of the foregoing minutes and immediately after, deponent who was the Secretary of the Board stated, that although the box where the coupons are kept has two keys, yet the Secretary is the one who has them in his possession, on ac-
569 count of having been merged in only one person the charges of Secretary and Comptroller of said Board of the Debt. Having been read and agreed it was signed as I do hereby certify. Palma. Maya. Jose de M. Llera. Emilio Valdes Valenzuela. Signed.

DEPOSITION, folio 89 back.—In the city of Havana on the 3d day of January, 1890, the Court being held in the office of the Board of the Debt, the doorkeeper, Mr. Domingo Caballero Alonzo, was summoned before it, and after having been informed that he ought to be truthful and of the penalties with which the Code punishes the crime of false witness in criminal prosecutions he was sworn in due legal form, and said: That his
570 name is Domingo Caballero Alonzo, a native of Sevilla, dwelling at No. 15 Mercaderes street, married, Orderly of the Intendencia, and sixty-six years old; having been informed of the names of the parties prosecuted in this process and asked to state if he knows them he says, that as employe he knows Messrs. Federico Prado and Luis Oteiza, and none of the other parties, and that he has never been imprisoned or prosecuted. Questioned how many doorkeepers there are in the office of the

Secretary of the Board of the Debt, at what time he comes to the office, and at what time he leaves it; he answers, that deponent is the only doorkeeper of this office, that he comes to it at 6 o'clock A. M., leaves it for a moment at 9 A. M. for his breakfast, and remains up to 5:30 or 6 P. M., when he goes home, after leaving the office closed. Questioned, if during the months of November and December last, he saw in the building of the office Mr. Oteiza carry away any book or bundle of paper that would call his attention, he answers, that he (Oteiza) used to carry away the newspapers which he received, when they formed a small package, but when they were large he directed deponent to take them to his house, and that certain day, about the middle of December last, the said Mr. Oteiza told him to carry to his house a bundle of papers with a proceeding as voluminous as the present proceedings, rolled and wrapped up in newspapers, to study them, as he said, and that deponent has not brought them back to the office, neither has he seen said Mr. Oteiza bring them back. The intimations of the Article 446 of the Code of Civil Procedure were made to him, and after this deposition was read to him by me he having waived his right, finding it correct he signed after his Honor and the attorney, as I do certify. Palma. Maya. Domingo Caballero. Emilio Valdes Valenzuela. Signed. 571 572

OFFICIAL COMMUNICATION, folio 99.—General Government of the Island of Cuba. Office of the Secretary. The Consul of the Nation in Key West in a telegram of this date, relating to the fugitive from justice Mr. Luis Oteiza, says to His Excellency the Governor General as follows: "For what may be of interest, person bought in house of Lawton draft for $1,000 on New York"; and this I transcribe to you by order of His Excellency, for due evidence in the criminal proceedings which you are instructing. May God preserve your Honor many years. 573

574 Havana, January 3d, 1890. Pedro A. Torres. To the Honorable Magistrate, Mr. Aniceto de Palma y Lujan.

DECREE, folio 100.—Havana, January 3d, 1890. Issue the rogatory letters requested by the attorney through the Governor General, limiting the requisition of delivery, as to Mrs. Francisca Cortes, to the drafts which are shown to have been drawn in her favor, and make it extensive to the holders of said drafts the order specified in the rogatory letters to be addressed to Madrid, and annex to these proceedings a certified copy of the same. Signed, EMILIO VALDES VALENZUELA.

CERTIFICATE, folio 100 back.—I do hereby certify that that the rogatory letters sent to Madrid in compliance with the foregoing decree read as follows: Aniceto Pal-
575 ma, Magistrate Instructor, criminal cause malversation to Senior Judge Instructor, Madrid. Intimate Mrs. Francisca Cortes, 16 Claudio Coello, delivery $500 she received per cable Havana, December 3d, from Banker Ojero and amount draft one thousand pounds (£1,000) on London, which she received end December, drawn Havana by Upman and Company, all sent by A. Andrade in proceedings, crime malversation. Arrest as receiver Mrs. Francisca Cortez if she delivers not the said sum or present not lawful excuses. Intimate Mr. Bernardo Villamil, Stock Exchange Agent, to deliver $77,000 that he received on December 28th, from Banker Ojero, by cable transfer from Gelats and Company. If
576 he has not now the sum, intimate whoever has it and should he not deliver it, even knowing that it comes from crime of malversation, arrest him should he not present lawful excuse. Should money holders deny reception of it, present yourself house banker Ojero to verify it and investigate where it is deposited and take possession of it. Inquire in the Board of Stock Brokers, who negotiated drafts on London until you find its returns. Havana, January 3d, 1890, Aniceto de Palma.

And in compliance with what had been ordered I draw this presents in Havana, January 3d, 1890. Emilio Valdes Valenzuela. 577

DECREE, folio 107.—HAVANA, January 4th, 1890. Whereas it appears that from the office of the Secretary of the Board of the Debt and from the safe which is in the said office, the custody of which was entrusted to Mr. Luis Oteiza y Cortes, as secretary, has been taken away a stub book of redeemable bonds, series "F," the coupons of which for the amount of $101,000 were collected in the Spanish Bank, and that there are in the proceedings indications of culpability against the aforesaid Oteiza whereby he was declared prosecuted and his arrest was decreed. Whereas it appears that said Oteiza has absented himself from Havana, abandoning his charge on the 28th of December last and taking passage on the steamer "Olivette," bound for the United States, where he has been arrested. Whereas it appears that the attorney for His Majesty instituted a criminal complaint on the 1st instant against Mr. Luis Oteiza and others for the crimes of malversation and abandonment of his charge. Considering that the crime of malversation, when the money misapplied is over 125,000 pesetas, as happens in this case, is punished with the penalties of temporal chain and disqualification, in agreement to Section 4th of Article 401 of the Penal Code. Considering that there are grounds to believe Mr. Luis Oteiza y Cortes criminally responsible for such crime. Considering that in agreement with Article 503 of the Code of Criminal Procedure the preventive imprisonment of the prosecuted parties is pertinent when there are sufficient grounds to believe them criminally responsible and the appropriated penalty is superior to that of correctional imprisonment. The provisional imprisonment of Mr. Luis de Oteiza y Cortes is hereby decreed, and it will be made known to him as 578 579

580 soon as he may be found in this city at the disposal of the Court, when he shall also be informed of the rights assisting him for demanding either by word or in writing the revocation or restoration of this decree, and let the secretary take care of reporting, with the separate incidental proceedings to be instituted to this end, within the 72 hours following the notification to the prosecuted party. So was decreed, ordered and signed by the Judge Instructor, as I do hereby certify. Aniceto de Palma, Emilio Valdes Valenzuela.

OPINION OF THE ATTORNEY, folio 109.—To the Honorable Magistrate Instructor of the cause about malversation. The attorney says: That as it is known to the Court by a communication from his Excellency the Gov-
581 ernor-General, Mr. Luis de Oteiza y Cortes has been detained in New York by the exertions of the Consul General of our nation in said city. It appears also from the process that the imprisonment of Oteiza has been decreed as author, criminally responsible, of the crime of Malversation of Public Funds, in a sum exceeding 125,000 pesetas, which is punished with the temporary chain and disqualification. Therefore it is now relevant, and the attorney requests the Court, to institute the claim for extradition as according to the additional agreement celebrated between our Government and that of the United States on August 7th, 1882, referring to the treaty for extradition between the same Govern-
582 ments on January 5th, 1877, the Government of the United States is bound to deliver to the justice of Spain the parties accused or convicted, among other crimes, of taking away or criminal malversation of public funds, committed within the jurisdiction of Spain by public employes or trustees, as determined by Section 13 of Article 2d, and that the claim be addressed through the General Government, annexing authenticated copy of Decree of imprisonment and of the commission of the

accused party Oteiza, Havana, January 4th, 1890, P. S. Maya. 583

DECREE folio 109 back. Havana, January 4th, 1890. Whereas, it appears that Mr. Luis Oteiza y Cortes has been declared prosecuted and his provisional imprisonment has been decreed, for malversation of Public funds for an amount exceeding 125,000 pesetas. Whereas, it appears that said Oteiza as Secretrary Comptroller of the Debt, is a public employe. Whereas, it appears that the attorney requested in his foregoing plea, the institution of proceedings for extraditing said Oteiza, who as proven in this process, is at present detained in the city of New York; considering that as all the requirements specified by the treaty celebrated between our nation and the United States, quoted by the Honorable 584
Attorney in his foregoing opinion have been complied with, it is proper to accede to the petition presented by the same. Considering that the crime for which Oteiza is prosecuted being punished with the penalty of temporary chain, according to Section 4th of Article 401 of Penal Code in force, is therefore fully comprised, by reason of its penalty in the above mentioned prescription of the treaties. Let a supplication be addressed to His Excellency the Governor General in order that he deign to demand from the Government of the United States, the extradition of the prosecuted party, Mr. Luis Oteiza y Cortes, which is at present detained in the City of New York, and annex to this end an authen- 585
ticated copy of the decree of prosecution and imprisonment and also of the foregoing opinion of the attorney and of the present decree. So was ordered by the Hon orable Magistrate Mr. Aniceto de Palma as Judge Instructor of the present process and he signed, Aniceto, de Palma, Emilio Valdes Valenzuela.

OPINION OF THE ATTORNEY, folio 111. To His Honor the Magistrate Instructor of the process about malver-

586 sation. The attorney says: That as an amplification of the Rogatory Letters addressed by cable last night to the senior Judge of Instruction of Madrid, he believes necessary and proposes to the Court that said Judge may be requested to practice a search in the houses of Mrs. Francisca Cortes and Mr. Bernardo Villamil, or of the persons who may be found in possession of the sums collected for the drafts mentioned in the former cablegram, should they not deliver immediately said sums, and that the sums that the said persons may have in banks or commercial houses be occupied and seized, addressing the Rogatory Letters also by cable and through His Excellency the Governor General, Havana, January 4th, 1890, P. S. Maya.

587 DECREE, folio 111 back.—Havana, January 4th, 1890. As suggested by the attorney: Let an authenticated copy of the Rogatory letters be transcribed hereon. Signed. Emilio Valdes Valenzuela.

CERTIFICATE, copy, folio 111 back.—I do hereby certify that the cablegram transmitted in obedience to the foregoing decree reads as follows: "Aniceto Palmer, Magistrate Instructor. Process malversation to Senior Judge Instructor, Madrid. Amplifying Rogatory letters yesterday, make search houses Mrs. Francisca Cortes and Bernardo Villamil or of persons found in possession of money obtained from drafts to see if can find funds and proceeding and correspondent malversa-

588 tion and occupy them. Occupy also funds may have in banks or commercial houses persons arrested in agreement with any former cablegram. Havana, January 4th, 1890. Aniceto Palma. And in compliance with the foregoing disposition I draw this present. Havana, January 4th, 1890. Emilio Valdes, Valenzuela.

DEPOSITION, folio 115.—In the city of Havana, on the 4th day of January, 1890, before the court assisted by

the undersigned Secretary, appeared Mr. José Infente, 589
who was informed of the obligation he has of being truthful, and of the penalties with which the Penal Code, punishes the crime of false witness in criminal process, and after being sworn in due legal form, he says: That his name is José Infante y Perez, native of Cadiz, dwelling at 120 O'Reilly street, unmarried, broker, and has never been imprisoned or prosecuted, and that as to the persons prosecuted in this process whose names have been told to him, he is acquainted only with Oteiza and Andrade, and not with the others. Questioned about the allusion to him that appeared in the deposition or Mr. Jacobo Sanchez Villalba, folio 84 back, he answered, that it is exact; that he was on the 590
27th of December last, in the afternoon in the basement of the commercial house of Mr. Hidalgo, where deponent has his office, close by that to the person who alluded to him. Mr. Luis Oteiza came there to ask Mr. Villalba to buy a draft on London for the sum of fifteen thousand pounds (£15,000) sterling in five bills of exchange of three thousand pounds (£3,000) each, to the order of Mr. Bernardo Villamil, Stock Exchange Broker, value received from Mr. Antonio Munoz Romero, and that the said sum he said proceeded from a testamentary, and that he wanted the said drafts on Saturday, at 9 A. M., all of which deponent heard, because there was a very short distance between the desk in which deponent works and that of 591
his companion Villalba; that this later spoke afterwards with deponent congratulating himself about the nice operation which had been confided to him, and which he explained on the same terms which deponent had already heard, and he asked him also if he knew Mr. Munoz Romero, to which he answered negatively that on the following day, that is, on the 28th of December, at about 9 A. M., Mr. Oteiza appeared in the

592 office stating that he desired a cable transfer on Madrid, instead of the drafts, and that he also witnessed the delivery made by Oteiza to Villalba, of a package of gold bills for the payment of the transfer; that they were counted in his presence, though he does not remember the number of them because he did not pay attention to it, and that his companion Villalba told him afterwards that he had bought the cable transfer in Gelats house, that deponent was likewise present, when Villalba delivered to Oteiza, a small sum in gold and gold bills as change, handing him also the documents justifying the payment of the transfer; that on this last transaction we also present the broker Mr. Pedro Bocali, and that at the first conference was pres-
593 ent Mr. José Joaquin Jimenez, who resides at number 68 Amargura street. The intimations contained in Article 446 of the Code of Penal Procedure, were made to him and after the present deposition was read to him, he having waived the right of reading, it being in conformity, he signed after his Honor and the attorney, as I do hereby certify. Palmer. Maya. José Infante Perez. Emilio Valdes Valenzuela.

DEPOSITION, folio 117 back.—In the City of Havana, on the 4th day of January, 1890, before the Court assisted by me as secretary, appeared Mr. Pedro Bocali, who was informed of the obligation he has of being truthful, and of the penalties with which the Penal
594 Code punishes the crime of false witness in a criminal prosecution, and after being sworn in due legal form he says: That he is called Pedro Bocali Echeverty a native of Matanzas, residing at No. 16 Mercaderes street, unmarried, Commercial Notary, has never been imprisoned or prosecuted; and after having been informed of the names of the prosecuted parties and their circumstances he says, that he knows by sight Mr. Luis Oteiza, and a certain Andrade, as a broker and does

not know any of the other parties. Questioned about 595
the allusion made to his person in the foregoing deposition of Mr. José Infante folio 115 he answered, that he has only been present to the return made by Villalba to Otezia when deponent had just arrived to his office in the morning of the December 28th, at about 9 or 10, of a small sum of gold and bills, wrapped in a small paper, and of the delivery to him (Oteiza) at the same time of another paper, which afterwards Villalba told him was a transfer that by request of that gentleman he had got from the house of Gelats, for a large amount of money, which amount he does not remember, but that he remembered the pleasure of Villalba for the unexpected transaction which he had made
at the end of the month, and that although at the same 596
time there were other persons present in the office, he cannot state their names now, because he does not remember them. The intimations contained in Article 446 of the Code of Penal Procedure were made to him and after the present deposition was read to him, he having waived the right of reading it, being in conformity he signed after His Honor and the Attorney, as I do hereby certify. Palma. Maya. Pedro Bocali. Emilio Valdes Valenzuela.

DECREE, folio 121 back.—Havana, January 4th, 1890, annex to the present proceedings the letter and envelope exhibited by Mr. Guillermo Herrera, and Mr. Sanchez Villalba having appeared before the Court, stating the 597
desire to amplify his depositions, let it be received. Signed. Emilio Valdes Valenzuela.

DEPOSITION, folio 121 back.—In the City of Havana, on the 4th of January, appeared before this Court for the purpose of amplifying his deposition, Mr. Jacobo Sanchez Villalba, 46 years old, and whose other qualifications are stated in his deposition in folio 84 back, and after being sworn in the legal form he says, that he de-

598 sires to rectify a point of his former deposition, which is the following: When Oteiza on the 27th directed him to buy drafts for the sum of fifteen thousand pounds (£15,000) in the note that the same gave him for drawing the Bill of Exchange, and which must be found in the house of Gelats, it was stated that the operation was to be made to the order of Mrs. Francisca Cortes, value received from Mr. Antonio Munoz Romero, and that in those terms were drawn the bills which he refused on the following day, preferring a cable transfer, which was made on Madrid in favor of Mr. Bernardo Villamil, appearing always as value received from Mr. Antonio Munoz Romero. It was read to him and he
599 being satisfied he signed after His Honor and the Attorney as I do hereby certify. Palma. Maya. J. F. Villalba. Emilio Valdes Valenzuela.

ENVELOPE, folio 123.—Mr. Guillermo Herrera. Contaduria of the debt; written with pencil on the back, "the 30th at 1 o'clock."

Letter, folio 124.—My esteemed friend Herrera: On account of difference of criterium with the new Intendente and of the personal antagonism of some superior Chiefs against others, I have resigned my charge, but I desire that it may not be known until my departure in order that friends may ask no explanations, nor enemies misrepresent them. Greet lovingly all the family and you know that I desire all happiness to you—
600 Oteiza—Please say good-bye with these explanations to all our companions in the office, as I am much obliged to them for their sympathies—The cash balance is the same as when I took possession and it is not necessary to go to the formalitites of another delivery. So I have stated to the Intendente in my petition. The key of the central drawer of the desk is in the drawer, and all the other keys inside the other drawers.

DECREE, fol. 125, Havana, January 4, 1890. Ask

from the Notary, Mr. Carlos Laurent, authenticated 601
copy of the minutes drawn, when he assisted the Chief Instructor, Mr. Lopez de Haro, on the 31st of December last —Ask likewise from the Notary of Finance certified copies of the minutes he has drawn since Mr. Luis Oteiza took charge of the office of secretary comptroller of the Board of the debt, or a certificate that has been drawn. Ask from the general direction of communications a copy of the cablegrams transmitted in the month of November and December last by Mr. Luis Oteiza to Mrs. Francisca Cortes or Mr. Bernardo Villamil, Madrid, and also of those sent by these parties to Oteiza in this capital. Let the allusions made to Mr. Narciso Gelats and the chief door-keeper of the intendencia 602
called Francisco be verified—Emilio Valdes Valenzuela.

INSTRUCTIVE DEPOSITION fol. 125, back. In the City of Havana, on the 4th day of January, 1890. The Court with assistance of myself as secretary, having been held in fortress of La Punta, the prisoner was ordered to appear before it, and he said : That he is Antonino Andrade y Lopez : The Court warned him of the obligation which he has of answering in a precise and clear manner and in agreement with the truth to the questions about to be made to him, and having offered to do so he deposed in the following form : Questioned about his personal circumstances he answers : That he is called Antonino Andrade y Lopez, has no nick name, is thirty-three years old, native of Lugo, dwelling at No. 85 603
Trocadero street, married, Stock Exchange agent, has no children, has never been prosecuted, knows to read and write, is not condecorated and is a volunteer. Question if he surmizes why this deposition is received from him he answers. That he surmises that it is on account of a robbery at the Board of the Debt, in which Mr. Luis Oteiza is complicated, and that he knew that he was sought for, and therefore he, deponent, presented

604 himself spontaneously to the Governor of the Province, at noon on this date, and that said authority sent him to this fortress, where he has been informed that he was to remain and incommunicated at the disposal and by order of the Court which is trying the said cause. Questioned if he knows Mr. Luis Oteiza, since when, and what kind of relations they have together, he answers, that he knows him since about eight years ago, and that they have come to have great friendship and acquaintance during that time, and had also had during said time some business in which Oteiza occupied him on account of deponent being a broker. Questioned on what date he commenced to make business transac-
605 tions with Oteiza, and if he remembers some of those transactions, stating what they were, and which was their pecuniary importance, he answers, that the first business of some importance in which he employed himself for account and order of Mr. Oteiza, as he believes that minor ones have no interest, was about the middle of the year 1886, when he delivered to deponent $108,000 in redeemable bonds for selling in the market; the same were delivered in the house of the banker Camara, who lives in Amargura street, corner to Havana, at the disposal of deponent, and after the sale was effected, with its proceeds were bought 460 annuities which were kept by Mr. Camara, and he supposes were delivered to Oteiza, or, speaking more exactly, he
606 is sure were delivered to him, because he knew afterwards that they had been stolen from him by Mr. Roberto Reiling, and that criminal proceedings were instituted against the same, in which must be found a certificate given by deponent as the broker who took part in said purchase. That he also remembers that about the beginning of 1889, a short time after the return of Mr. Oteiza from a trip to the Peninsula, he sold, for the order and account of Mr. Oteiza, some shares,

the numbers of which he does not remember, of the railroad from Cienfuegos to Villaclara; that he has also bought and sold for account of Mr. Oteiza, without remembering the amounts, some lots of redeemable paper, and got for his account transfers by cable and drafts in favor of Mrs. Francisca Cortez. Questioned to state in detail the dates and amounts of the drafts taken by him for account of Oteiza, in favor of Mrs. Francisca Cortez, he answers, that he cannot remember those made in the times somewhat far back, but that he remembers a draft of $500, taken in favor of said lady, from the house of Gelats, with receipt in favor of depónent at the beginning of last December, and another draft for one thousand pounds (£1,000) of the house of H. Upman & Company, in favor of Mrs. Francisco Cortez, on the 9th or 10th of the same month of December, and that the receipt given for it was also in the name of deponent; that the $500 of the first transfer were brought from Oteiza to deponent, by a tall man dressed with striped clothes and who looked like an orderly; and that Oteiza wrote to him on sending this sum in gold bills inclosed in the letter, that said sum was for his mother because that day was the Feast of the Patron Saint of his Mother; and that the money for the one of one thousand pounds (£1,000) was given to him personally by Oteiza, in the Hotel Florida where Oteiza resided, in gold bills, when nobody was present; but in the ante-chamber, where he was waiting for Oteiza, with the object of receiving said sum, deponent was accompanied by the broker Rodriguez, who resides at said hotel. Questioned, after exhibiting to him the lists that appear in the gubernative proceedings, which I do hereby certify are the same sent in a separate proceedings, denominated "of documents," in which they are found at folios 2 to 21, to state if the signature on the

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610 same, which reads A. Andrade, is that of deponent, and if said covers, when he signed them, were exactly in the same condition as they are to-day, he stated that the signatures on the 20 covers exhibited to him are of the own handwriting of deponent, and that when he signed them they had not either the note in the margin which reads "enter in its register," "there is a sign," nor the report that appears in the centre of each cover which reads. "Mr. Secretary Comptroller; this coupons are of a numbering subsequent to September, 1886, November 15th, 1889, Ag-n Maig. There is a sign." Nor likewise a seal in blue ink reading "Intendencia General de Hacienda de la Isla de Cuba," with a sig-
611 nature under it. Questioned to explain the intervention which he has had in the transaction to which these 20 covers refer he answers: that on the beginning of November last, Oteiza asked him if he could collect some coupons of bonds of the redeemable debt to which he answered "yes," that from 12 to 2 in the afternoon, in the office of Mr. Oteiza, in the Board of the Debt, where this one had called him on the previous day, and when nobody was present, Oteiza told him that as the transaction was for a large amount of money, and the Intendencia had not always funds in the bank, it was necessary to divide it in three parts, which could not be cashed in the bank until the month of December; to
612 this he answered that on that date it was very possible that deponent should be away from Havana, in San Juan y Martinez, place at which resides a brother of deponent, who has there a commercial partnership, the contract of which terminates on the 31st of December; and that probably deponent should be the person charged with making the liquidation of the same; to which Oteiza answered that whoever should be tne persons of trust which deponent would employ in this business, he should be obliged to answer

for all the coupons, and that then he gave a receipt for the whole sum, which receipt has not been returned to him ; that looking for trustworthy persons he remembered Messrs. Fernando Valdes and Mr. Juan Remus, who both reside in the same house, No. 4 Ayuntamiento street, Cerro, to which persons as also to their families he is bound by the ties of an old and intimate friendship ; that said persons on being called by deponent, came to his house for the purpose of autho izing the Lists, and that he agreed to advise them then they should call to collect, that all this took place about the middle of November ; that Oteiza, in his house, Hotel Florida, delivered to him first, the twenty copies in triplicate which are signed by deponent, about the date stated on them ; that deponent took them home for signing them, and after they were signed he returned to Oteiza the twenty triplicate copies, to which he refers. That about the middle of November, Otezia delivered to deponent the other forty originals, duplicate and triplicate, which were signed at the house of deponent, by Mr. Fernando Valdes and Juan Remus, who authorized them, and that on the following day he returned them to Oteiza ; that Oteiza told him to go often to his office for advising him when he should go to collect the said covers ; that during fifteen days he saw him every second day, going to the office of Oteiza for the above stated object ; that on Saturday the 30th of November, Otezia told him to go on the following day Sunday, from 11:30 to noon to get the first lists aud and the corresponding coupons, and so he did ; and Oteiza requested him to examine if the coupons were in their relative order, for greater facility in comparing them at the Bank. That on Monday the 2d of December, at 10:15 A. M. deponent went to the office of the Comptroller of the Spanish Bank of the Island of Cuba, in the Bureau which is charged with revising and com-

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604 paring the covers with the notes sent by the Intendencia; that after waiting for one hour in the Bank, for the arrival of the employee, who as he had heard, is brother-in-law of the Comptroller Carvallo, he addressed himself to this gentlemen requesting him to appoint another person for compliance with the requisites of the Bank, as the person who had charge of it had not arrived, that said gentleman went with deponent to the table, called employee and directed him to settle the matter, and when the person called by the Comptroller was doing it, the employee who is charged with the aforesaid operation came and finished the work. After this was done, he went to get the signature of the Comptroller, and then with lists and coupons he went to the
605 Cashier's office and delivered everything to the paying teller, who is in charge of the second window of the left side, whose name he does not know, although he knows him very well by sight, and who may know deponent because he sees him in the Bank; he asked him at what time he could call to collect the amount, and was answered to come at about half-past two; deponent requested him to keep for him some gold bills of large denominations, because so he was requested by Oteiza for better facilities; when deponent returned at half past two the Cashier told him that there were only $20,000, which he received and he requested him to place to the credit of the account of deponent the balance up to
606 $46,000, which he would come to collect in bills on the following day; and that he remembers that the greatest part of the bills in gold that he received were of a thousand dollars: and the balance of five hundred dollars that he was just going out of the bank when he was recalled by the Cashier, who had paid him, because just at that moment has arrived the Collector of the Banco del Comercio who comes always at the last hour to the Spanish Bank to cash the checks against the Spanish

that during the day have been admitted by the Bank of Commerce, and probably he brought Gold Bills which he would give to him; and in fact he brought $10,000 for which deponent gave a check leaving a balance in favor of deponent of $16,000, belonging to Oteiza; with this money he went to the office of Oteiza, to whom he delivered it; giving him also a check for $16,000 which, with the $30,000 in gold bills which he had delivered before, made up the $46,000 amount of the 20 lists; and that he cannot remember the denomination of the bills for the $10,000, which the Collector of the Bank of Commerce had brought. Questioned whether he knows when and what form were cashed the lists that appear signed by Mr. Juan Remus he answers; that on the same second day of December when he delivered the $46,000 to Oteiza, this gentleman told him that he should go to collect on Wednesday 4th, that he should go to collect on Wednesday 4th, the $41,000 of the list of Remus, for which purpose deponent was to go on Tuesday the 3rd to the house of Oteiza to receive the lists and coupons. That on the same Monday he personally gave notice to Remus to come to take breakfast to the house of deponent, and cash afterwards the lists that were signed by him. In this very moment rectifies he what he had just said and states; that he gave the notice to Remus on Tuesday the 3rd, when deponent had already in his possession the list and coupons, that Oteiza had given to him, and on Wednesday the 4th deponent accompanied Remus to the door of the Bank, when he went to deliver the lists and coupons; and Remus likewise requested that bills of large denominations should be kept for him, that at 2.45 P. M. Remus came out of the Bank with $11,000 in gold bills of $1,000 and as there was no more bills, Remus ordered in the Bank that the $30,000 balance should be placed to the credit of the account of deponent. On this stage of the proceedings

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622 and three hours having elapsed since the beginning of this Interrogatory, His Honor ordered the suspension of the Act, considering it as finished and I the Secretary, having read this present to deponent. he having waived the right to read it, being in conformity he signed after His Honor and the Attorney as I do hereby certify. Palma. Maya. A. Andrade. Emilio Valdes Valenzuela.

OFFICIAL COMMUNICATIONS, fol. 134. Spanish Bank of the Island of Cuba, Governor. I have received the courteous communication of your Honor, dated on this day, insisting on the demand of the original coupons and lists of the Redeemable Debt Series "F." Numbers 16,001 to 16,500, and stating that you ex-
623 pect that what is prescribed shall be complied with, thus sparing to this Court the displeasure of seeing judicial precepts disobeyed, and the painful necessity in which he is of enforcing their compliance. The Board of Government of this Bank at an extraordinary meeting, held on this date, having been informed of said communication and also of the preceding communications, has agreed to resolve that the orders of your Honor should be complied with to the end of not incurring disobedience; but making use in the delivery of the documents referred to, of all the precautions that may be considered necessary and may be possible, among which must be comprised an authenticated copy of the numbers and actual conditions of
624 each of them for its proper ends, and I have the honor of stating so to you in compliance with what has been resolved and in answer to your above mentioned communications. May God preserve you for many years. Havana, January 4th, 1890. P. S. Jose Ramon de Haro. To the Honorable Magistrate, Special Judge Instructor in the Criminal Process against Mr. Federico Prado and others.

OFFICIAL COMMUNICATION, folio 156. Intendencia

General de Hacienda de la Isla de Cuba. Illustrious 625
sir: In consequence of the communication of your Honor, on account of the process which you are instructing about payment of coupons of the debt, steps have been immediately taken for obtaining from the Bureau of the Debt, the data required for presenting the reports asked for in said communication, and therefore I beg leave to report to your Honor about this matter in the same order stated in your aforesaid communication. In the first place I must call the attention of your Honor to the capital difference existing between the way in which the "Ordenacion de Pagos," operated before the 5th of December last, and from that date up to now. Up to that date the functions of the "Ordenador de Pagos," 626
were annexed to the Intendencia General de Hacienda, while since the 5th of December in which the Ordenacion was re-established, by the creation of the charge of Ordenador, the Intendente has ceased in the discharge of said functions, exercising only the superior attributions of the Ordenacion General or be it the faculty of opening and determining payments, and the high inspection. And, having understood that the informations which your Honor require, refer to the manner in which the Ordenacion de Pagos, or be it the Intendencia, operated before the 5th of December. I will state it referring always to an epoch previous to the said date. 1st: When payments
relating to the interests of the Debt or of Coupons were 627
ordered, the covers or documents carried indifferently before the signature, the words "El Intendente General de Hacienda" or "El Ordenador General de Pagos;" and the cause of this was, as already stated, that up to the date of December the 5th last, in which the Ordenacion Central Pagos was reestablished, the Intendencia had been assuming the functions of the Ordenacion, and those of a superior order, which were proper of the In-

628 tendente became confounded with those that he exercised by accumulation as Ordenador General de Pagos. Therefore it must be established and as a very substantial point, that the authorization given in the words before the signature, already mentioned, or the "Be it paid," was a function performed as "Ordenador," and in no case as "Intendente." The course followed for the verification and payment of Coupons in the Bureau of the Board of the Debt, is as follows: The holder of the Coupons presents three covers, authorized by himself, in which he states the date when they are due, the series, the number and the value of the Coupons which he desires to collect. The holder has to deliver these
629 Covers together with the Coupons, included in them, to the officer in charge of the Bureau of payments of coupons, for comparing the numbers with those appearing in said covers, and after the comparison is made, and after being assured by the entries of every one of the instalment to which they appertain, that they have not been paid, he must report on those points to the Chief of the Bureau, who after inspecting the Book of Issues, and that of Bonds in circulation, reports in his turn, to the Secretary Comptroller, in order to obtain in this way the security of the propriety or impropriety of making the payments. The Chief of the Office, that is the Secretary Comptroller having these reports in view, decides whether the order for payment must be issued or not.
630 After the payment is decided, the two other copies are prepared, and after making the due entries in the auxiliary books of accountability, one of the covers, which is considered as original, is taken to be signed to the Ordenador de Pagos, (the functions of whom up to December the 5th, were exercised by the Intendente) who subscribes them in the place where it is written "Be it paid." After this last thing is done, the respective coupons are to be perforated in the presence of the in-

terested parties, and in the office of the Debt, and 631
those accompanied by the original lists, are paid by the Spanish Bank, which at the same time must receive to this end, as a direct order of payment, the second cover authorized by the Clerk and the Secretary. The intervention properly called of the Intendente in this matter, commenced and finished with the decision about retention of funds, proceeding from taxes, for the payment of Interest of the Debt, after proceedings have been instituted by the same Secretary's Office. 2nd: In the course followed for the payment of coupons, there was not in each case a previous agreement with the Intendente in the character of Ordenador, and therefore the proceedings of verification of lists could 632
not be entered in the index of business transacted by the Intendencia, nor the course of said proceedings could appear in the Book of Registry or Entry. 3rd: That in the Safe of Deposits of the Office of the Secretary of the Board of Debt there were only Stub books, without the necessary requirements for making the payments ordered by the Board. 4th: That some of them had the bonds and the coupons cancelled and others were not canceled, but lacking always the requirements of authorization, for making payments with them, and that at this time he cannot report by whom they were canceled, on account to what orders, because the deposits of said bonds was made so long ago, that it shall be required to employ much time in 633
searching for its precedents, and that this work is being done now in order to answer this question as soon as possible. In order to know the numbers of the Bonds of the Debt which are issued and placed in circulation, the Intendente should be obliged to enter into the details of the operations which are proper to the Bureau of Secretary Comptroller of the Debt, which prepares all matters which, like those, must be sanctioned by a

634 resolution of the Intendencia. 5th: In regard as if it can be shown that Mr. Federico Prado as Interventor General has made any efforts to obtain from the Board of the Debt all the data and precedents required for establishing the fiscal accountability, copies are hereon annexed, of the communications which have been found in the aforesaid office of the Secretary Comptroller. 6th: A list is annexed with the residence of employees of the office of the Debt, as requested by your Honor. May God preserve your Honor for many years. Havana, January the 4th, 1890. Angel Urzais. To his Honor the Judge Instructor of the cause about payment of Coupons of the Debt.

635 DECREE, folio 169, Back. Havana, January the 5th, 1890. The Decree of the 4th of the present month, in which it was ordered to request from the General Direction of Communications a copy of all the telegrams sent by Oteiza in November and December last to Mrs. Francisca Cortez or to Mr. Bernardo Villamil, as also all that the said persons may have addressed to Oteiza in this city, is hereby extended to the delivery of certified copies of all telegrams sent to Mrs. Francisca Cortez and Mr. Bernardo Villamil by any person which may appear as sending the same during the same dates. Signed. Emilio Valdes Valenzuela.

636 DEPOSITION, folio 170, back. In Havana, on the 5th of January, 1890. Before the Court constituted appeared a person who said he was called Mr. Francisco Encina, to whom his Honor intimated the obligation which he has to be truthful, informing him also of the penalties with which the Penal Code punishes the crime of false witness, in criminal causes; and after being sworn in due legal form, he says: that he is called Francisco Encino Terjon, 47 years old, unmarried, Chief doorkeeper of the Intendencia, residing in the Custom House, and that he has never been imprisoned

or prosecuted; and that in regard to the prosecuted parties whose names have been given to him, he stated that he knows Prado, Oteiza and Maig, because they are employed in the office where deponent works, but that he does not know the others. Questioned, after exhibiting to him the cover of the letter found at folio 123, which I do hereby certify is the same exhibited by Mr. Guillermo Herrera, in order that he may state who delivered to him such letter, and when and with what directions, he answered that the said letter, together with a larger one, addressed to the Intendente, were delivered to deponent by a white person, dressed in striped clothes, known to him by sight, and whom he would recognize should he see him, from one to three P. M., on the 30th day of December last, and that deponent delivered the letter for Mr. Herrera to the same, under cover, and that he delivered the communication to the Intendente to the doorkeeper Diaz that he should direct it. Questioned, if he knows the residence of Mr. Agustin Maig, he says no, and that his dwelling was unknown, and that when such question was asked from him, as was done sometime by doorkeeper Caballero, who wanted to enter him in the corresponding register, he answered, What address will I give? and he remained as in doubt, until at last he said a certain house in the Calzado de San Lazaro, when he does not, where he does not reside, because as Caballero told him he went there in search of him, and was not to be found there. Questioned, whether he knows the private amanuensis of Mr. Oteiza, he says no, but that Caballero must know it, because he has stated to him that Mr. Oteiza paid $3.00 a day from his own pocket, to said Amanuensis. The intimations of Article 446 of the Code of Criminal Procedure, were made to him, the deposition was read to him, he having refused to do it himself, and he signed after his Honor and the Attorney as I do hereby certify.

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640 Palma. Maya. Francisco Encina. Emilio Valdes Valenzuela.

AMPLIFICATION, folio 172.—In the City of Havana, on the 5th day of January, 1890, before the Court appeared the prosecuted party, Mr. Antonio Andrade, whose general qualifications are found in the proceedings, and having been examined by way of amplification of his instructive deposition, the following questions were put to him. Questioned, when did he hand over to Oteiza the balance of the $41,000 of the covers signed by Remus, he answered, that at 3 o'clock of the same day, Wednesday, the 4th of December, he returned to the Spanish Bank, to see if the Collector of the Bank of Commerce had brought some Gold Bills
641 of large denomination, and that he collected $20,000 in bills of all denominations, the largest part of which were in bills of $1,000 and $500, and that he gave the corresponding check for them. He went immediately to the Bureau of Oteiza in his Office, to deliver to him said money, and also the $31,000 in gold bills, that he gave him also a check for $10,000 which he drew in the very desk of Oteiza, and that at this moment a gentleman, whom he does not know came in, and remained here a few moments, and perhaps this gentleman saw deponent sitting at the desk drawing the check; that with this check and a sum of about $8,000 in Gold Bills of small denominations which Oteiza gave to him
642 on the following day, deponent went to the Bank to cash the first, and convert all the sum to Gold Bills of large denominations, which he obtained and which he delivered to Oteiza in Bills the largest part of which were of $1,000 and $500. Questioned if he intervened in the collection of the lists suscribed by Mr. Fernando Valdes, and what kind of intervention he had, he answered; that he accompanied him also to the Bank with the Coupons and Lists, on the 6th or 7th of Decem-

ber, and left him there, recommending him to ask for 643
Gold Bills of large denomination, as requested by Oteiza and if he could not obtain them, to place to the credit of the account that deponent had in the Bank, whatever he could not collect in Bills of such denomination. That Valdes collected 5 or 6 Thousand Dollars in Gold Bills of $1,000 each and the balance was credited to the account of deponent who afterwards delivered to Oteiza the Gold Bills collected, and a check for the balance which Oteiza returned to him and which deponent collected two days later, together with the other check for $10,000 proceding from the collections made by Remus; that said checks were paid to him in Gold Bills of $100 and $50 by the paying teller of the Bank who is at the 644
second window on the left side, from a package of said Bills which he opened in that moment; and he delivered said money immediately to Oteiza, having thus balanced all the account and Oteiza having received the $100,000, amount of the 60 Lists. Questioned what was the amount of his brokerage in the aforesaid operations, what sums he has received from Oteiza, and if there has been any agreement between them, he answered, that his brokerage amounted to $250, that he had made no stipulation with Oteiza, that Oteiza gave him for the first collection $200 Gold, for the Second $200 Gold also, and for the third $100 also in Gold, without making him any question about the amount of his brokerage; and that deponent, in his turn, gave to Valdes 645
and to Remus $50. each in paper for their trouble in going to make the collection. Questioned, if he saw the Coupons that Oteiza gave to him before they were perforated; he answered, he had not, because Oteiza delivered them to him perforated and in packages, in order correlative to the dates when they became due, and each package bound with two rubber bands. Questioned whether Remus and Valdes are acquainted

646 with Oteiza he answered that he does not believe they know him even by sight. Questioned if he knows Mr. Federico Prado and Mr. Augustin Maig, he answers that he knew the first by sight and the second as employé of the Board of the Debt, where deponent went on account of his profession, and that he does not know where Maig resides. It was read to him, and, being satisfied, he ratified and signed it after His Honor and the attorney, as I do hereby certify. Before signing he stated that, although he directed Valdes to ask bills of large denominations, he did not say to him that this was done by direction of Oteiza. They signed in conformity. Palma-Maya. A. Andrade. Emilio Valdes Valenzuela.

647 Be it known that the personal description of Mr. Antonino Andrade is as follows: Regular size, slender, gray eyes, dark color, full beard, aquiline nose, regular mouth; he is clothed in a cashmere sacque and vest of olive color and cashmere pants with white stripes, calf gaiters and white , as I do hereby certify. Emilio Valdes Valenzuelo.

Deposition, folio 174 back. In Havana on the 5th day of January. The Court, assisted by me, appeared in the Fortress of La Punta, and a person arrested was ordered to appear before it, who said that he was named Juan Remus; the Judge intimated to him the obligation he has of answering in a precise and clear manner, and in agreement with the truth, to the questions about

648 to be asked to him, and he having offered to do so, he deposed in the following manner: Questioned about his personal circumstances, he answered that his name is Juan Remus y Alvarez, without any nickname; he is 35 years old, native of Havana, resides at number 4 Ayuntamiento street, unmarried, in mercantile business, has never been imprisoned or prosecuted, and knows to read and write. Questioned if he supposes why this deposition is asked from him, he answers: That he be-

lieves it is on account of a criminal prosecution, and, having heard that he was sought for, he presented himself spontaneously at the office of the civil Government of the Province, and from there was taken by an inspector of police to the place where he actually is. Questioned whether he knows Messieurs Federico Prado, Luis Oteiza, Augustin Maig, Fernando Valdes and Antonio Andrade, he answers that he knows Valdes and Andrade and does not know the other parties, because the first is a nephew of deponent and the second an intimate friend, in whom he has all confidence. Questioned after exhibiting to him the covers found at folio 42 to 61 of the documentary proceedings, which I do hereby certify are the same, for the purpose of recognizing the signature which reads his name and surname, and whether he remembers if when he signed them they were in the same condition in which they are now, he answers: that he acknowledges the twenty signatures written on the covers exhibited to him, as of his own hand and writing, but he does not remember if they were or not in the same conditions as to-day, because he instrusted his signature to the good faith and confidence that his friend Andrade inspired to him. Questioned, if he collected the sums represented by said covers, on what day and hour, where, and what steps he took for the collection, he answers: that on a certain day of the last month, which date he does not exactly remember, his friend Andrade accompanied him to the door of the bank for the purpose of collecting said covers, and that there many employes dispatched them facilitating the collection, but that he cannot state either the course that they followed, or the names or charges of the employes through whose hands they passed, but he remembers well that they gave him in payment of the sum a paper which he does know if it is called a check or a "quedan," for the amount of

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652 30,000 dollars (certificate of deposit), and $11,000 more in gold bills of $1,000 each, which he asked at the bank by directions of Andrade, to whom he delivered the document and the bills; and that he does not remember if it was on that same day or afterwards that Andrade gave him $50 paper for his services. Questioned if he has anything more to state, he answers: that he remembers now that he took breakfast in the house of Andrade on the day in which he went to sign the lists. This deposition which took fifty minutes was considered as concluded, without that preventing its continuance when it may be required, and having been read by me to deponent, he having waived his right to do it, it was ratified and signed by him, after his Honor and the
653 attorney, as I do hereby certify. Palma. Maya. Juan Remus. Emilio Valdes Valenzuela.

DEPOSITION, folio 176 back.—In Havana, on the 5th day of January, 1890, the Court attended by me was opened in the Fortress of La Punta, and Mr. Fernando Valdes, therein arrested, was ordered to appear before it; his Honor intimated to him the obligation he has of answering in a precise and clear manner, and in agreement with the truth, to the questions about to be asked from him, and he having offered to do so, he deposed as follows: Questioned about his personal circumstances he says: that he is called Fernando Valdes Remus, without any nickname, twenty-three years old, a native
654 of Havana, resident of Number 4 Ayuntamiento street, Cerro; unmarried; in mercantile business; has never been imprisoned or prosecuted, and knows to read and write. Questioned if he surmises the reason why this deposition is taken from him, he answered, that he presented himself on this date to the Civil Government, because he knew he was sought for, in this criminal prosecution, and also that he had received a notice to this end from Andrade.

Questioned, after exhibiting to him the covers found 655
at folio 22 to 41 of the documentary proceedings, which
I do hereby certify are the same transferred to this
cause, for the purpose that he may state if the signa-
tures set in them and having his name and surname,
were placed there by deponent; he answered, that he
recognized them as his own, and written by his own hand,
and that he remembers having set also others similar to
those in other forty covers more as originals and dupli-
cates of those that he now recognizes, all of which he
signed in the house of Andrade in a day which he does
not remember exactly, but that it was about the middle
of last November; that some days afterwards he went,
by request of Andrade and accompanied by him, to the 656
Spanish bank, where he went up-stairs separating him-
self from Andrade, and there he delivered the covers
together with a package of coupons, which Andrade had
handed to him for this end, and after having passed
them through two desks at the upper floor, where the
employee dispatched him, he went down to the paying
office and there he was paid the $13,000, amount of the
coupons, receiving a part in gold bills, and another part
in a certificate, not remembering the separate amount of
the bills or of the certificates, and that he delivered on
the same day both to Andrade, and that this gave to
him, in payment for his services, $50 in paper. Ques-
tioned whether he knows Messrs. Federico Prado, Luis
Oteiza, Agustin Maig, Antonio Andrade and Juan Re- 657
mus, he answers: that he knows Remus who is his
uncle, and Andrade who is an intimate friend of depo-
nent, and that he does not know the other parties.
Questioned if he knew through Andrade the origen of
said coupons, and if said coupons were perforated, he
answered: that Andrade said nothing to him and that
he never saw the coupons, because they we wrapped up.
Questioned whether he has anything to state, he an-

swered no. This deposition which has taken forty-five minutes, was considered as concluded, without that preventing its continuation when required, and after it being read to deponent, who waived his right to do it, he ratified and signed it with His Honor and the Attorney, as I do hereby certify. Palma. Maya. F. Valdes. Emilo Valdes Valenzuela.

CERTIFICATE folio 180. Mr. Aniceto Suarez y Barcenas, Chief of Bureau of Civil Administration of the 2nd Class, acting as Secretary of the Intendencia General de Hacienda of this Island. I do hereby certify that in the Bureau of General Affairs of the Secretary's Office of this Intendencia, is found an original document which verbatim reads thus: Department of the Colonies (Ministerio de Ultramar) No. 1520. Most Excellent Sir: The King (G. S. H.) and in his name the Queen Regent of the Kingdom has deigned to issue the following decree: At the proposal of the Secretary of the Colonies, and in the name of my August Son the King Alfonso XIII, and as Queen Regent of the kingdom, I have decided to appoint Mr. Luis Oteiza y Cortes as Chief of Administration of the 4th Class and Secretary Comptroller of the Board of Debt of the Island of Cuba, he being actually with equal rank and class employed in the Intervencion General of the said Island. Given in San Sebastian on the 7th of September, 1889. Maria Cristina. The Secretary of the colonies. Manuel Becerra. And I communicate the same to your Excellency by Royal Order for information and other proper ends. May God preserve your Excellency for many years. Madrid, September 8th, 1889. Becerra. To the Governor General of Cuba. Havana, October 5th, 1889. Let the order of his Majesty be complied with. Salamanca. And I do likewise certify that Mr. Luis Oteiza y Cortes appointed by Royal Decree of September 7th, 1889, to the office of Chief of Administration of the 4th Class, and

Secretary Comptroller of the Board of the Debt, took possession of his charge on the 8th of October 1889, and his Excellency the Governor General having asked for these precedents, in his communication of this date, as wanted in the proceedings for extradition of Mr. Oteiza, I issue this present in Havana on the 4th of January, 1890. Verified. The Intendente General. Urzais. Aniceto Suarez Barcenas. A seal reading "Intendencia General de Hacienda de la Isla de Cuba." 661

OFFICIAL COMMUNICATION, folio 184.—General Government of the Island of Cuba. His Excellency the secretary of the colonies, in a cipher cablegram of this date says to me as follows: $77,000 collected from Villamil, other judicial steps are being actively taken," and I transmit the same to you, that it may produce its proper effects, in the criminal proceedings, that your Honor is now instructing. May God preserve your Honor for many years. Havana, January the 5th, 1890. Salamanca. To the Magistrate Mr. Aniceto de Palma y Lujan. 662

DECREE, folio 184.—Havana, January 6th, 1890. To its proceedings. Acknowledge receipts and request by cable the Senior Judge of Instruction of Madrid, to deposit the sum seized in royal coffers, to the order of this Court, and inform by cable and through the secretary of the colonies that he has done so. Signed. Emilio Valdes Valenzuela.

DEPOSITION, folio 186.—In the city of Havana on the 6th of January, 1890, before this Court appeared, Mr. Narciso Gelats y Durall, whose personal qualifications are already stated in these proceedings, and having been warned of the obligations which he has of being truthful, and of the penalties in which incur persons bearing false witness in criminal prosecution, he was sworn in due legal form and was examined as follows: Questioned if he keeps in his possession and can deliver 663

664 the note of Broker Villalba, about the purchase of fifteen thousand pounds (£15,000), of which he canceled afterwards by the same Villalba; he answered, that he keeps in his possession and can deliver to the Court, the note which the broker Mr. Jacobo Sanchez Villalba handed over to him about the 27th of last December, asking for fifteen thousand pounds (£15,000) sterling in five drafts on three thousand pounds (£3,000) each, to the order of Francisca Cortes, value received from Antonio Munoz Romero, said drafts to be on London at 60 days, to be delivered and collected on the following day; the note is signed by Mr. Villalba, who on the following day, asked him to annul this operation, and therefore it was annulled and instead of it, a cable transfer
665 was bought on Madrid, for $77,000, to the order of Mr. Bernardo Villamil, Stock Exchange Agent, and as value received from Mr. Antonio Munoz Romero, as he has already stated; and in compliance with the desire of the Court, he delivered the said note to the Judge, who ordered that it should be annexed hereon. The intimations of Article 446 of the Code of Criminal Procedure were made to him and I read him this deposition and he found it correct; and it was read to him because he waived his right to do it, and he signed after his Honor and the Attorney, as I do hereby certify. Palma. Maya. Nar. Gelats. Emilio Valdes Valenzuela.

NOTE OF DRAFTS, FOLIO 188.—Pounds sterling, 3,000.
666 3,000. 3,000. 3,000. 3,000. £15,000, to the order Fran—ca Cortes, value received from Antonio Munoz Romero. Havana, Decembor 27th, 1889. J. S. Villalba. For to-morrow early. Broker Villalba.

DEPOSITION FOLIO 195.—In the City of Havana, on the 6th day of January, 1890, before the Court appeared Mr. Jacobo Sanchez Villalba, to whom his Honor gave warning of the obligation which he has to be truthful, and he was informed of the penalties with which the

Code punishes the crime of false witness in a criminal prosecution; his personal qualifications have been already described; he was duly sworn and he answered to the questions put to him in the following manner: Questioned, after exhibiting to him the note delivered by Mr. Gelats, and found at folio 188, and which I certify is the same added to the proceedings, whether this is the same note that deponent handed over to Gelats & Company, if he received it in the same form in which it is found at present, from whom, and on what date and what place? He answers, that the said note is exactly the same that he handed over to Gelats & Company, having received it from Mr. Louis Oteiza y Cortes who to this end went to the office of deponent in the evening of the day of which the note is dated, and that the only things deponent wrote on it, were the date, signature and the notice "for to-morrow early," and the corrections of the two first number of the sum which was mistaken because it read 14,000 instead of the 15,000 asked for. The intimations of Article 446 of the Code of Criminal Procedure were made to deponent, and being informed of his right to read this proceeding, which he waived, it was read by me, the Secretary, at his request, and he signed after his Honor and the attorney, and I do hereby certify. Palma. Maya. J. S. Villalba, Emilio Valdes Valenzuela. 667 668

EXAMINATION BY EXPERTS, folio 209, back.—In the city of Havana, on the 7th day of Janury, 1890. The Court attended by me, being held in the office of the Board of Debt, or be it at the office of the Secretary of the same, and attended by the expert caligraphers Mr. Manuel Pruna Santa Cruz, and Mr. Luis Biosca, who on being sworn in due legal form offered to act true and faithfully in the performance of their charge. The Secretary of the Board of Debt, was requested to pre- 669

670 sent documents with the undoubted handwriting of Mr. Luis Oteiza y Cortes, and he exhibited a paper with a report of the said Oteiza y Cortes to the petition of Mr. Juan Arana Garcia, asking for the delivery of $100, that Mariano Maldomingo paid into the Treasury on the 11th day of December, 1889, and having exhibited to the said experts the cover and letter on pages 123 and 24, and the report of Mr. Luis Oteiza y Cortes on the petition of Mr. Juan Arana, already referred to, after being instructed of the object of this step, and after also having examined the note of folio 1888 they dictated the following report: That they have examined with the greatest care, the handwriting of the letter,
671 cover and note which has been exhibited to them, and they find in all their tracings, connections, distances and other caligraphic conditions, so many points of identity that they all appear to be made by the same hand. That comparing all this handwritting with that of the report about which there is no doubt, which has been also exhibited to them, they find such an identity in their form and style, that they appear to be made also by the same hand who drew those referred to, and which are the object of this examination. They also stated that what they have reported is the truth, in compliance with the oath they had taken; and Manuel Pruna Santa Cruz stated that he was a native of Santiago de Cuba, fifty-one years of age, resident of No.
672 109 Industria street, married, professor of public intruction, and has never been imprisoned or prosecuted; and Mr. Luis Biosca y Comellas stated that he was a native of Barcelona, fifty-seven years old, married, professor of public instruction, resident at No. 14 Galiano street, and has never been imprisoned or prosecuted; they were informed of the prescription of Article 446 of the Code of Criminal Procedure. I returned, after rubricating it, the report about which there is no doubt, and

which was exhibited by the Secretary of the Board of the Debt, directing him to keep it at the disposal of the Court, for the case it may be necessary. The act was considered as concluded, and all parties signed it considering it correct, after having been read by me the Secretary, as the experts, on being informed of their rights to read it, waived said right, to all of which I do hereby certify. Palma. Maya. Dr. Manuel Pruna Santa Cruz. Luis Biosca. Jose de M. Llera. Emilio Valdes Valenzuela. 673

DEPOSITION, folio 217.—In the city of Havana on the 7th day of January, 1890, appeared before the Court, a person who said that his name is Antonio Munoz Romero to whom his Honor gave warning of the obligation which he has of being truthful, and of the penalties with which the Code punishes the crime of false witness in a criminal prosecution; and after being sworn in due legal form he says: that his name is Antonio Munoz Romero, a native of the Puerto de Santa Maria, resident of the Hotel Florida, 31 years old, unmarried, clerk and waiter of the same hotel, and has never been imprisoned or prosecuted. Questioned if he knows the prosecuted parties whose names have been stated, he answers that he knows Mr. Federico Prado by sight, and Mr. Luis Oteiza y Cortez, because he attends and takes care of the room in which said gentleman dwells; he knows a certain Andrade, but does not know if it is the same person about whom he is asked for, because this Andrade went some times to see Mr. Oteiza, and he heard that he was called by that name, and that he does not know the other parties. Questioned if he generally dresses or has some time used a striped suit he answered, he answered no, and that he only used that kind of cloth eight years ago when he was a military man. Questioned if he has some times made some errands from Mr. Luis Oteiza to said Andrade to which he refers, he answered, that he 674 675

676 never has. Questioned if deponent has some time intended to make, or if he has made a transfer of fifteen thousand pounds (£15,000) sterling in favor of Mrs. Francisca Cortes, resident of Madrid, he answered no. Questioned if Mr. Luis Oteiza y Cortes has ever asked him leave to use his name and surname for making a transfer for the aforesaid sum, and in favor of the said lady, he answered that he has not authorized him for such a thing, but that about two months ago, Mr. Oteiza asked him what were his family names, because he knew him only as Antonio, and this same question was repeated by the said Don Luis in the middle of December 1889, a few days before his departure. Questioned if he went
677 sometimes by order of Mr. Luis Oteiza y Cortes or to look for him to the office of the Board of Debt, he answered, that he had never gone to that office. Questioned if he had any intervention in his own name, or as attorney, for any interested party, or as heir of Dr. Antonio Munoz Romero, in the testamentary proceedings of the same, or if he knows or has ever known here, in Havana, any person having such name and surname, he answers negatively to both questions or particular points of the question made to him. The intimations of Article 446 of the Code of Criminal Procedure were made to him; his deposition was read to him, he having requested the secretary to do so, and he finding his deposition correct signed it, after his Honor and the attor-
678 ney, as I do hereby certify. Palma. Maya. Antonio Munoz. Emilio Valdes Valenzuela.

OFFICIAL COMMUNICATION, folio 251--General Government of the Island of Cuba.—His Excellency, the Secretary of the Colonies, in ciphered cablegrams of this date, says to me as follows: The Court has taken possession of the $77,000 of Villamil and has taken from Mrs. Francisca Cortes one thousand pounds (£1,000) in drafts and $2,000 more in cash. Report through me

whatever data may elucidate matter Oteiza for judicial amplification, Madrid; and I transmit the same to you for the proper effects in the process you are instructing. May God preserve you for many years. Havana, January 7th, 1890. Salamanca, Honorable Magistrate Mr. Aniceto de Palma y Lujan. 679

CERTIFICATION, folio 266.—As Secretary of the Spanish Bank of the Island of Cuba, I do hereby certify that according to the reports of the Bureau of the Auditor and Cashier of this Bank, in consequence of a communication dated on the 7th December instant, in which the Honorable Magistrate, Mr. Aniceto de Palma Special Judge Instructor of the process against Mr. Federico Prado, Mr. Luiz Oteiza and others for malversation of funds of the board of the debt, directs that a certificate be sent showing that the coupons corresponding to the bonds of the redeemable debt series "F," numbers 16,001 to 16,500, have been collected; by the bearers of said bonds, A. Andrade, F. Valdez and J. Remus, specifying the dates on which they collected from the data existing here, it appears that the coupons corresponding to the bonds of the redeemable debt, series "F," numbers 16,001 to 16,500, were collected by the bearers; the coupons Nos. 1 to 20, Nos. 16,051 to 16,280, by Mr. A. Andrade on December 2d. The coupons from 1 to 20, Nos. 16,296 to 16,500 by Mr. J. Remus on December the 4th, and the coupons 1 to 20, Nos. 16,001 to 16,050 and 16,281 to 16,295 by Mr. F. Valdez on December the 5th. And for the purpose of forwarding it to said Magistrate, Special Judge Instructor, I issue this present by order and with verification of his Excellency, the Sub Governor, Mr. José Ramon de Haro, Governor by reglementary substitution, in Havana, on the 8th day of January, 1890. Verified, Haro. J. B. Cantero. Two Seals. 680 681

I certify likewise that in the Inventory of Books, Stub Books, documents and other effects existing in

682 the room of the office of the Secretary of the Board of the Debt, of which delivery was made on October the 8th, 1889, by the retiring Secretary, Mr. Francisco Lopez de Haro, are found among others, as values of which Mr. Luis Oteiza y Cortes took charge the following:

Redeemable.

Books	Series	Amount of each Bond	Numbers of Same
1	F	$1,000	16,001 to 16,500

and in compliance with what is ordered by his Honor the Magistrate Instructor, Mr. Aniceto de Palma y Lujan, in the Criminal proceedings about Malversation of Public Funds, against Mr. Federico Prado, Mr. Luis Oteiza y Cortes and others, I issue this present certified
683 copy, with the verification of His Honor, for its end in the Extradition of Mr. Luis Oteiza y Cortes, in Havana on the 8th of January, 1890.

CORRECTIONS.—Verified, Aniceto de Palma y Lujan. —the Secretary.—Emilio Valdes Valenzuela

Mr. Venancio Zorilla y Arredondo, President of the Territorial Audiencia of Havana: I do hereby certify: that the signatures of Don Aniceto de Palma y Lujan, Magistrate of the Criminal part of this Court, Judge Instructor of the Criminal proceedings about Malversation of Public Funds, followed against Mr. Federico Prado, Mr. Luis Oteiza y Cortes and others, and that of Mr. Emilio Valdes Valenzuela, Secretary appointed
684 for said Criminal prosecution, are genuine, and legitimate and those that they constantly use in all their writings; in testimony whereof, I issue this present, under the Seal of this Court, in Havana, on January the 8th, in the year 1890.—Venancio Zorilla y Arredondo, Official Seal of the Royal Audiencia of Havana —Don Manuel Salamanca y Negrete, Lieutenant General of the National Armies, Governor General and Captain General of the Island of Cuba, etc., etc., etc.

I do hereby certify that Mr. Venancio Zorrilla y Arredondo, by whom appears subscribed the foregoing certification, is, as he styles himself, President of the Territorial Audiencia of Havana, and the signature with his name and surname is similar to that which he is accustomed to use in his official acts, and for its proper ends I issue these presents in Havana on January the 8th, 1890. Man'l Salamanca y Negrete.—Seal of the General Government of the Island of Cuba. 685

Consulate General of the United States of America, at Havana, Island of Cuba. I, the undersigned, Consul General of the United States of America at Havana, Cuba, do hereby certify that the signature to the foregoing and annexed document of Don Venancio Zorilla y Arredondo, President of the Superior Court of Havana, to which is also affixed the seal of said Court, certifying to the signature of Don Aniceto de Palma y Lujan, Associate Justice of said Court, charged with the criminal proceedings against Don Federico Prado, Don Luis Oteyza y Cortes, and others, for embezzlement of public funds, and of Don Emilio Valdes Valenzuela, appointed Clerk of said Court in said proceedings, is the true and genuine signature, in the handwriting of said Don Venancio Zorilla y Arredondo, President of the Superior Court of Havana, and such as he is accustomed to use in his official acts. I also certify that the signature of Don Manuel Salamanca y Negrete, affixed to the foregoing and annexed certificate, to which is affixed the seal of the General Government of the Island of Cuba, are the true and genuine signature and official seal of His Excellency Don Manuel Salamanca y Negrete, the Governor General of the Island of Cuba, and such as he is accustomed to use in his official acts. And I further certify that the copies of the depositions, proofs, papers, documents and other evidence hereto annexed, have been properly and legally authenticated, 686 687

688 so as to entitle them to be received as evidence for similar purposes by the tribunals of Spain and of the Island of Cuba. In witness whereof, I have hereunto set my hand and affixed the seal of this Consulate General at Havana, the Eighteenth day of January, One Thousand Eight Hundred and Ninety. RAMON O. WILLIAMS, U. S. Consul General. [Seal of the Consulate.]

COMPLAINANT'S EXHIBIT 5, Jan. 7, 1890. E. H. C., Sten.

Original in cipher and translation in Spanish marked Exhibit 1 and 4.

689 Cable message. Government of Havana, January 6, 1890.

To 5 January. Counsel of Spain, New York: It is necessary that your Excellency do the best to prevent by all means, and assisted with our counsel, that Oteiza be set free before the proceedings for his extradition which I send by to-morrow's steamer be examined. Your Excellency must bear in mind that if for any circumstance you could not obtain it, although I do not believe that such thing should happen your Excellency must send an agent of all confidence and well paid to follow his steps and send us immediate advice of the place where he shall go to a foreign country, or contribute by all means to his detention if he should go to a
690 Spanish territory. SALAMANCA.

COMPLAINANT'S EXHIBIT 6, Jan. 7, 1890. E. H. C., Sten.

Original in Spanish, marked Exhibit 2.

(Translation) Havana, January 6, 1890.

To 5 January. The Consul of Spain, N. Y. By to-

morrow's steamer I send to that place (you) the proceedings of the Court on which the extradition of Oteiza should be asked for. In said proceedings which are perfectly adjusted to the treaty, will be found with all clearness proofs of the crime and evidence that a great part of the money stolen was forwarded by draft by Oteiza to Madrid; and that the tribunal there has taken possession, as the Minister of the Colonies communicates to me by cable of the sum of $77,000, which has been placed at the disposal of the Court here, which has this cause in hand. SALAMANCA. 691

COMPLAINANT'S EXHIBIT 7. 692

Original in Spanish, marked Exhibit 2.

HAVANA, January 6, 1890.

From Havana Government, to Consul of Spain in New York: Oteiza has been charged with having embezzled and committed malversation of public funds under his charge as secretary of the debt of Cuba. Criminal proceedings have been commenced against him and a warrant of arrest has been issued by our authorities. SALAMANCA.

COMPLAINANT'S EXHIBIT NO. 8. 693

Cie Gle. Transatlantique, Paris, 12 Boulevard des Capucines, New York, 3 Bowling Green, from New York to Havre. Voyage No. Steamship "La Champagne," or any other which may be substituted. Departure from New York, January 4, 1890. M. LUIS DE OTEYZA.

Amount received,		Berth,
$100.	1st Class.	72—1,525.

694 COMPLAINANT'S EXHIBIT No. 9, JANUARY 14, 1890.
E. H. C., STEN.

(Stamp.)

Gen'l Transatlantic Company, Western Railroad. Special trans.'at train No. 18, 247. Start from Havre for Paris (St. Lazare) 1st class, corresponding with the arrival at Havre. Price of ticket of steamer La Champagne. Mr. Luis de Oteiza. Model 266.

COMPLAINANT'S EXHIBIT No. 10, JANUARY 14, 1890.
E. H. C., STEN.

695 Face of ticket. Passenger's check. Car 384. From Tampa to Jersey City. En route to--George E. Wifl, conductor; on back—Pullman's Palace Car Co. C. 24,807.

COMPLAINANT'S EXHIBIT No. 11, JANUARY 14, 1890.
E. H. C., STEN.

Oteiza.

113 Claudio C'dello, Madrid. 8005, 6078, 4807, 13674, 20010, 7791, 21382, 20013, 8794, 2423, 9952, 15588, 14783, 11950, 21046, 9721, 17017. Pablo.

On the back: Travelling cap, strong overcoat, gloves,
696 Spanish books, spatter dashes, to collect bill of exchange, passage ticket, to exchange money. Hotel Brunswicke, Room No. 93. The National Bank of Commerce, 27 Nassau.

COMPLAINANT'S EXHIBIT No. 12 A, JANUARY 14, 1890.
E. H. C., STEN.

Received from Mr. forty-six thousand dollars

in coupons of the redeemable debt of the Island of Cuba, with the collection of which, said gentleman has commissioned me, I binding myself to deliver the proceeds to him as soon as the same have come to hand. And for his protection I sign these presents at Havana, on the seventh day of November, one thousand eight hundred and eighty-nine. (Signed), A. Andrade. 697

COMPLAINANT'S EXHIBIT NO. 13 A, JANUARY 14, 1890.
E. H. C., STEN.

Received from Mr. thirteen thousand dollars in coupons of the redeemable debt of the Island of Cuba, with the collection of which, said gentleman has commissioned me, I binding myself to deliver the proceeds to him as soon as the same have come to hand. And for his protection I sign these presents at Havana, on the fourteenth day of November, one thousand eight hundred and eighty-nine. (Signed), A. Andrade. 698

COMPLAINANT'S EXHIBIT NO. 14 A, JANUARY 14, 1890.
E. H. C., STEN.

Received from Mr. forty-one thousand dollars in coupons of the redeemable debt of the Island of Cuba, with the collection of which, said gentleman has commissioned me, I binding myself to deliver the proceeds to him as soon as the same have come to hand. And for his protection I sign these presents at Havana, on the seventh day of November, one thousand eight hundred and eighty-nine. (Signed), A. Andrade. 699

700 COMPLAINANT'S EXHIBIT 15, Jan. 14, 1890.

This Exhibit is a list of figures found on the person of the prisoner when arrested, and by consent is omitted.

COMPLAINANT'S EXHIBIT 16 *a*, Jan. 24, 1890.
E. H. C., Sten.

Number 2,456. [Stamp.] 0,000,321.

Personal certificate, year 1889, Province of Havana, 4th class, 6 dollars 25 cents. Mr. Luis de Oteiza Cortes, a native of Madrid, do. province & 36 years of age, un-
701 married, and lawyer by profession, residence in Obispo, No. 28, and habitually resides in said place. At Havana, on the 27th of April, 1889. The party interested. [Seal] The Alcalde of the wards Elias Fr. Casona. Passport 1888, he paid three dollars and 12 ½ cents.

On the reverse side. Havana, 27 December, 1889. He goes to the United States, he having presented certificate of being exempted from military service. Medium height, black hair, do. eyes, full beard, good color. (Signed) Elias Fr. Casona.

702

COMPLAINANT'S EXHIBIT 17 *a*, Jan. 24, 1890.
E. H. C., Sten.

Number 966. 0,386,083.

Personal certificate, year 1889, Province of Havana. Mr. Antonio Munos Romero, a native of the Sa. Ma. Province of Cadiz, 31 years of age, unmarried, clerk by occupation, resides at Obispo, No. 28, and habitually re-

sides in the same place, at Havana on the 28th of March, 1889. The party interested. The Alcalde, Elias Fr. Casona, Bo., 1888, he paid 7½. 703

On the reverse side, Havana 27, December, 1889. He goes to the Peninsula, medium height, brown hair, gray eyes, little beard, good color. (Signed) Elias Fr. Casona. Flourish. (Stamp.)

COMPLAINANT'S EXHIBIT NO. 18 A, JANUARY 14, 1890.
E. H. C. STEN. 704

[SEAL] N. 3,641,525.

At the city of Havana, on the 8th day of the month of October, 1889, His Illustrious, Federico Prado, General Comptroller of the government, General Intendant of the Exchequer and General Officer for the ordainment of payments by substitution, according to the regulations; His Illustrious Angel Ma. Carvagal Central Treasurer of the Exchequer; His Illustrious Franco-Lopez de Haro y Chincilla, Secretary Auditor of the Honorable Board of the Debt of the Island of Cuba, and Mr. Luis Oteiza y Cortez, Chief of Administration of the 4th Class, appointed by Royal Order of the 7th of September, 1889, for the office of Secretary Comptroller of the Honorable Board of the Debt, in conformity with what is stated in the Royal Order, number 1,520 of the 8th of the aforesaid month of September, having assembled together in a place where the Central Treasury of the Exchequer is situated; His Excellency the General Intendent of the Exchequer stated this meeting had for its object the delivery to Mr. Oteiza y Cortes of the securities contained in the safe in said office, not 705

706 only to make the payments thereof, but to take charge of the same for which purpose he ordered the opening of the aforesaid safe. His Illustrious Central Treasurer of the Exchequer in consequence thereof exhibited the balance sheets to this date, of the securities in hand and His Illustrious Secretary Auditor of the cash books of the securities of the Sinking Definitive Debt of 3% interest. and of 1% of Sinking Fund and Pensions (anualidades), as well as two registers of the securities in hand on deposit for the purpose of burning the same, for the liquidation of both kinds of debts, which balances being closed to this day gives a result in conformity with the balance sheet above set forth, and in accordance with the examination made of said securities
707 existing in hand and which are the following certificates of the Definitive Debt of the Sinking Fund of 3% interest and 1% of the Sinking Fund to be paid 257 of the series "A," 168 of the "B," 299 of the "C," 26 of the "D" and 1,448 of the "F," all of which amount to $1,497,925. The numbers corresponding to the foregoing certificates are the following: To the series "A" from 34,744 to 35,000; of the "B" from 19,333 to 19,500; of the "C" from 22,702 to 23,000; of the "D" from 16,204 to 16,219, and from 16,491 to 16,500; and of the "F" from 13,055; to 13,500 from 14,001, to 15,000, and from 12,499 to 12,500. The foregoing Certificates have annexed thereto 11,565 Coupons of the Series "A";
708 7,560 of the "B"; 13,455 of the "C"; 1,170 of the "D"; 65,160 of the "F," which represent a value of $674,066.25. Certificates of the same Debt existing in the deposit constituted in favor of the respective parties interested for the term of 5 years in conformity with the Resolution of the Honorable Board of the Debt of the 20th of July 1883; 182 of the Series "A"; 38 of the "B"; 9 of the "D", amounting to $8,250. Said Certificates have annexed thereto 8,190 Coupons of the Series "A"; 1,710 of

the "B", and 405 of the "D", which amount to $3,712.50. 709
Certificates of the same Debt received by Mr. Haro as Certificates Unredeemable and as appears in the cash book as belonging to reintegration. 181 of the Series "B"; 103 of the "C"; 16 of the "D"; 46 of the "F", which amount to $68,550. Said Certificates have annexed thereto 6,525 Coupons of the Series "B"; 4434 of the "C"; 720 of the "D"; and 1647 of the "F", which value is $25,606.50. The numbers corresponding to the Certificates on deposit are as follows:

Of the Series "A" from 27,907 to 27,910, 29,533 to 25,547, 29,740 to 29,741, 29,760 to 29,761, 29,763, 29,750 to 29,754, 29,680, 29,817, 29,818; and from 29,822 to 29,825, 30,110, 30,126, 30,209, from 29,957 to 29,970, 710
30,107, 30,108, from 29,742 to 29,744 and from 34,543 to thirty-four thousand five hundred and fifty-one. 32,476, from 32,517 to 32,529, 32,552, from 32,563 to 32,577, 32,591 to 32,609, 34,277 to 34,279, 34,284 to 34,331, 34,243 to 34,245, and 34,247. Of the Series "B" from 18,933 to 18,940, from 17,509 to 17,517, 17,466 to 17,469, 19,095 to 19,097, 18,435 to 18,444, 18,628, 18,630, 18,631, 18,633, 18,642 and 18,643. Of the Series "D", 13,773, 13,776, 14,021, 14,022, 14,025, 14,026, 16,408. Numbers of the Securities Unredeemable are the following of the Series "B" 1101, 3095, 7770 to 7887, from 8247 to 8253, 8258, 8827, 12,322 to 12,324 12,332, to 12,337; from 15,138 to 15,157, from 15,192 to 15,203, 16,501, 16,565, 17,062, 17,172, 17,586, 17,587, and from 17,632 to 17,636. Of 711
the Series "C": 4,250, 4,288 to 4,297, 4,306, 4,330 to 4,337, 8,030, 10,564, 16,387, 16,408, 16,497, 16,500, 17,177, 17,251. Of the Series "D" 14,825 to 14,838, 15,499 to 15,500. Of the Series "F": 88,328, 335, 2,004, 5,393, 5,400, 7,541, 7,542, 8,985, from 9,346 to 9,350, 9,696 to 9,716, and from 11,762 to 11,765. The residue of the same in remainder of the same debt disposable for the issue $7,444.14, and on deposit $1,144.41, which number is not

712 herein stated in detail, so as not to retard this proceeding, and which number is mentioned in the statement existing in the possession of His Illustrious the Treasurer. In certificates of the Definitive Debt (anualidades) 141 certificates of $5 each, the value of each one is $70.50 amounting in the aggregate to $9,940.50, and which are to be issued and have annexed hereto 7,050 coupons, which at $2.50 amount to $17,625. The numbers of the foregoing certificates are from 46,360 to 46,500. Annuity certificates existing on deposit as above stated with those of the Redeemable Debt one of $70.50 and one of $141 amount in all to $211.50, which have annexed to each one 50 coupons, amounting in all to $375, and the numbers being from 42,908 of the Half Annuity, and of
713 the whole 48,946. The certificates of the same debt received by Mr. Haro, which value is unredeemable and which appears in the cash book as belonging to the redeemable issue are: 177 of $70.50 and 604 of $141, amounting to $97,642.50, which certificates (annuities) have annexed thereto the half 7788 coupons of $2.50 and the whole 26,576 coupons of $5.00, which value is $152,350. The numbers of the half annuities are the following: 937, 1,958, 15,406, 15,449, 16,116, 16,174, 17,256, 17,269, 18,500, 19,993 to 19,997, 20,021 to 20,027, 20,053 to 20,089, 20,570 to 20,572, 20,631, 20,632, 21,684, 21,956, 22,121, 22,293 to 22,301, 22,366, 22,490, 23,145, 23,274, 23,300, 23,319, 23,320, 23,385, 23,445, 23,460. 26,416,
714 from 27,001 to 27,053, from 29,416 to 29,423, 29,426, 29,427, 29,446 to 29,448, from 29,466 to 29,480, 29,557, 29,771 to 29,775, 29,888, 30,187, 30,188 and 30,367. The numbers of the whole annuities are the following: 782, 790, 1,185, 1,223 to 1,233, 2,011, 7,983, 8,830, 8,831, 9,292, 9,533, 10,374 to 10,387, 10,454, 10,456 to 10,462, 10,567 to 10,581, 11,501, 14,848, 14,854, 14,910, 16,206, 16,207, 17,881, 17,895, 17,943, 17,944, 18,481, 18,482, 20,226 to 20,241, 20,507, 20,592, 21,350, 21,460, 21,688, 21,

783, 21,784, 21,820, 21,861 to 21,865, 24,951 to 25,000, 715
25,301 to 25,401, 25,406 to 25,432, 25,440 to 25,451, 25,-
501 to 25,559, 25,623 to 25,700, 25,787 to 25,836, from
25,862 to 25,886, 27,994, 28,000, 28,574, 28,575, 28,588,
28,640, 29,145 to 29,165, 29,197, 29,198, 29,488, from 30,-
253 to 30,290, 30,561, 30,562, 30,565, 30,566, 30,579, from
30,669 to 30,679, 31,502, 31,503, 31,506, 31,507, 31,516,
31,585, 31,660, 32,236, 32,237, 50,178, 50,179, 50,195, 50,-
243 to 50,249 and 50,259, which numeration aforesaid
for the Annuity Debt as well as the redeemable,
conforms with the respective registers belonging
to both kind of debts, exhibited by His Illus-
trious the Comptroller, now about to give up
his position. Any residues of the same Debt ready for 716
the issue $26,563.55. on deposit $1178.89, which numera-
tion is not detailed herein for the reasons expressed as
to the Redeemable Debt referred to. Securities belong-
ing to the deposit ready for burning 280 Coupons of
the Series "A," 2 of the "B," 383 of the "D," 1929 of
the "F," amounting to $20,127, which Coupons when
Mr. Haro received them it was made known that it pro-
ceeded from those detached, and which were delivered
by the Ex-Treasurer Mr. Sedano, and which appear in
the register in its column, and which as the parties in-
interested have no right to receive that amount, they
are detailed from the Securities. Also there are 16
Coupons of the Series "F," amounting to $160 which
appear in the same column of the aforesaid Register, 717
detailed from the Securities paid from the time of the
last burning. Coupons delivered by the Spanish Bank
as proof of their payment 12,265 Coupons of the Series
"A," 7,248 of the "B," 7,097 of the "C," 12,056 of the
"D," and 10058 of the "F," which amount to $138,-
479.25 Coupons sent by the Ministry of the Colonies
in justification of their payment 3668 of the Series
"A," 1,664 of the "B," 776 of the "C," 294 of the

718 "D," 445 of the "F," amounting to $7,563, which coupons tally with the total amount shown by the aforesaid Registry of the Debt Definitive and Redeemable of 3% interest, and one of amortization closed on this day. Securities corresponding to the Definitive Debt of Annuities existing in the deposit for burning, 2 coupons of $2.50, 2 of $5. received by Mr. Haro; from the detached ones delivered by Ex-Treasurer Mr. Sedado, also 133 Coupons of $2.50 detached from the Annuities delivered in payment of claims after the last burning was made. Coupons deliverd by the Spanish Bank in justification of their payment belonging the similiar kind of Debt; 6,862 of $2.50 and 2,785 of
719 $5.00. Coupons sent by the Ministry of the Colonies in justification of their payment 740 of $2.50 and 1,642 of $5.00. Securities of the Provisional that by reason of Exchange ingressed in the deposit for burning. One Annuity of $7.50 and 20 Residue, amounting to $930, which securities tally with the total amount shown by the Registry of the Definitive Debt of Annuities closed on this day. There are also in the safe and Mr. Oteiza received them 22 Vouchers of Annuities, amounting to $3,736.50, and 50 of the Redeemable amounting to $45,025, making known that one of those Vouchers for the sum of $1,450. is punched, and there being do more delivery of the securities to be made this act was terminated, Mr. Oteiza receiving the key of the safe, which was in
720 the possession of Mr. Haro, he signing both the Books of Cash and Registry aforesaid, and signed with all the parties to this present document; and in testimony of all that has taken place, and of which the necessary corresponding copies are made for its justification of delivery made by the late and incoming Comptroller. Luis de Oteiza. Fed-o Prado. Francisco Lopez de Haro. A. M. Carvajal.

COMPLAINANT'S EXHIBIT No. 18, FEB. 7, 1890. E. H. C., STEN. FOR IDENT. 721

Consulate General of the United States of America at Havana. I, the undersigned, Consul General of the United States of America at Havana, Cuba, do hereby certify that the signature to the foregoing and annexed document of Don Venancio Zorilla y Arredondo, President of the Superior Court of Havana, to which is also affixed the seal of said Court certifying to the signatures of Don Aniceto de Palma y Lujan, Associate Justice of said Court, charged with the proceedings against Don Federico Prado, Don Luis de Oteyza y Cortes and others for embezzlement of public funds, and of Don Emilio Valdes Valenzuela, appointed clerk in said proceedings to be 722
in my opinion true and genuine and in the hand writingof the said Don Venancio Zorilla, President of the Superior Court of Havana. I also certify that the signature of Don Manual Salamanca y Negrete to said the document, to which is affixed the seal of the general Government of the Island of Cuba, is, in my opinion, the true and genuine signature of His Excellency Don Manuel Salamanca y Negrete, Governor-General of the Island of Cuba. And I do further certify that the copies of the depositions, proofs and other evidence hereto annexed, have been, in my opinion, thereby properly and legally authenticated, so as to enable them to be received as evidence by the Tribunals of Spain and of the Island of 723
Cuba. In witness whereof I have herennto set my hand and affixed the seal of this office at Havana, this 9th day of January, A. D., 1890. Ramon O. Williams, U. S. Consul-General. [Seal.]

Consulate General of the United States of America, at Havana, Cuba. I, the undersigned, Consul-General of the United States of America, at Havana, Cuba, do hereby certify that the foregoing is a true and faithful

724 copy of the original certificate first affixed by me on the 9th of January last, certifying to the official signatures to certain proceedings of extradition against Don Luis de Oteyza y Cortes and others, but which was withdrawn by me on the 18th day of January annulling my signature thereto, and substituting therefor a certificate which now appears to the said proceedings, and that the foregoing copy has been carefully compared with the said original on file in this office and found to agree therewith word for word. Given under my hand and and seal of this Consulate, this 31st day of January, 1890. Ramon O. Williams, U. S. Consul-General. [SEAL.]

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COMPLAINANT'S EXHIBIT No. 19, FEBRUARY 7, 1890, FOR IDENTIFCATION.

Consulate General of the United States of America, at Havana, Cuba.—I, the undersigned, Consul General of the United States of America, at Havana, Cuba, do hereby certify that the foregoing is a true and faithful copy of the original certificate first affixed by me on the 9th of January last, certifying to the official signatures to certain proceedings of Extradition against Don Luis de Oteyza y Cortez and ors, but which was withdrawn by me on the 18th day of January annulling my signa-
726 ture thereto, and substituting therefor a certificate which now appears to the said proceedings, and that the foregoing copy has been carefully compared with the said original on file in this office and found to agree therewith word for word. Given under my hand and seal of this Consulate General at Havana, this 31st day of January, 1890. Ramon O. Williams, U. S. Consul General.

[SEAL.]

COMPLAINANT'S EXHIBIT No. 20, FEBRUARY 12, 1890, FOR IDENTIFICATION. 727

E. H. C. Sten.

Cable Message. The Western Union Telegraph Company.

Number.	Sent by	Rec'd by	No. of words.
2486	W. L.	B.	44

Received at Central Cable Office, 16 Broad St., N. Y.

10 Febrero.

Havana Govt., 10 February, 1890. Commissioner Lyman, New York.—At request of Acting Governor General I have to-day authenticated Copy of declaration of Andrade *in re* Oteiza to be mailed to-day to you 728
care of Consul General of Spain, New York. Ramon O. Williams, Consul General.

COMPLAINANT'S EXHIBIT No. 24, Feb. 12, 1890.

Exhibits 21, 22 and 23 are originals in cipher and translation.

10th February. To Spanish Consul, N. Y. — By steamer Olivette, which sailed to-day, I forward important deposition of the broker Andrade, which it is well the Court should be informed of, and by steamer of day 729
after to-morrow, I send the original certificates which you ask by to-day's telegram. It will be well to obtain extension of time in the proceedings on the demand until both documents arrive. Consul Williams has sent telegram to Commissioner stating that he had legalized the first of said documents. Answer. CAVADA.

730 COMPLAINANTS' EXHIBIT 25A.

FEBRUARY, 19, '90. E. H. C.

[SEAL.] No. 1,558,805.

I, the licentiate, Emilio Valdes y Valenzuela, clerk of the Court assigned to the case brought against Louis Oteiza y Cortez, Federico Prado and others, for malversation of public funds, do certify, that in said case is to be found the following declaration: At Havana, on the 8th day of February, 1890, the Court went to the Fortress of La Punta, where it caused Mr. Antonino Andrade, against whom proceedings have been carried on, to appear, his general description being already set forth, and he was notified of the obligation that he had
731 to state clearly, precisely, and in conformity with the truth, and he agreed so to do, and by way of amplifying the deposition by him already made he was examined to the following effect: Having been asked whether when he received from Oteiza the coupons, and lists to the value of $100,000 for collection, he gave him one or more vouchers or receipts, and in what form and terms they were drawn up, and whether they were written in the handwriting of the affiant, and on what date, he declared, that he delivered to Mr. Oteiza three receipts on the same day, although he does not remember the dates thereof, one being for the amount of $46,000; another for $41,000; and another
732 for the amount of $13,000, all with the name in blank, written in the handwriting of the affiant, on one half sheets of the commercial paper separated in the middle, and which receipts set forth approximately the following: "Received of Mr. , the sum of $46,000 in coupons of the Redeemable Debt of the Island of Cuba, which has been delivered to me for collection, which amount I return so soon as the same be converted into cash. Havana, such a day of November, 1889.

A. Andrade." And that the other two receipts were identical or similar to that which he has set forth with the difference in the amounts which were $41,000 and 13,000, and that he remembers perfectly well that on taking such receipts to Mr. Oteiza, the latter was annoyed, because he did not wish to receive the same, and that the affiant left them on the table in the room of Oteiza. The examination was declared terminated without prejudice to its continuation, and it was read to him at his request and by him ratified and he signed after His Honor, and the assistant District Attorney, to which I certifiy. Palmer. Maya. A. Andrade. Emilio Valdes y Valenzuela. Here follows three flourishes. And in compliance with that directed to be done I issue this present with the approval of His Honor the judicial Magistrate, assigned for the investigation of this case, at Havana, the 8th day of February, 1890. Examined, found correct. Aniceto de Palma y Lujan. Emilio Valdes y Valenzuela, clerk. 733 734

I, Venancio Zorilla y Arredondo, Presiding Judge of the Territorial Superior Court of Havana, do certify that the foregoing signatures of Aniceto de Palma y Lujan, and Mr. Emilio Valdes y Valenzuela, are genuine, the former being the investigating Judge, and the latter, clerk of the same; and in testimony thereof, I issue this present at Havana, the 8th day of February, 1890. Venancio Zorilla y Arredondo.

[SEAL] 735

I, Felipo Fernandez Cavada, Governor General ad-interim of the Island of Cuba, etc., do certify that Mr. Venancio Zorilla y Arredondo, by whom the foregoing certificate appears signed is, as he styles himself, Presiding Judge of the Superior Court for the territory of Havana, and that the signature of his name and surname is similar to that which he is accustomed to use in his official acts. And for the proper effect I issue

736 this present at Havana, the 8th day of February, 1890.
Felipe F. Cavada.

[SEAL.]

(Here follows the certificate of the U. S. Consul at Havana, in English.

COMPLAINANT'S EXHIBIT NO. 27 A, FEBRUARY 19, 1890.
E. H. C., STEN.

Consulate General of the United States of America, at Havana, Island of Cuba. I, the undersigned, Consul General of the United States of America, at Havana,
737 Cuba, do hereby certify that the signature to the foregoing and annexed document of Don Venancio Zorilla y Arredondo, President of the Superior Court of Havana, to which is also affixed the seal of said Court, certifying to the signatures of Don Aniceto de Palma y Lujan, Associate Justice of said Court, charged with the proceedings against Don Federico Prado, Don Luis de Oteyza y Cortez and others, for embezzlement of public funds, and of Don Emilio Valdes Valenzuela, appointed Clerk of said Court in said proceedings, to be, in my opinion, true and genuine, and in the handwriting of the said Don Venancio Zorilla y Arredondo, President of the Superior Court of Havana. I also certify that the signature of Don Manuel Salamanca y Negrete to the said
738 document, to which is affixed the seal of the General Government of the Island of Cuba, is in my opinion, the true and genuine signature of his excellency, Don Manuel Salamanca y Negrete, the Governor General of the Island of Cuba. And I do further certify that the copies of the depositions, proofs and other evidences hereto annexed, have been in my opinion thereby properly and legally authenticated, so as to enable them to be received as evidence by the Tribunals of Spain and

of the Island of Cuba. In Witness Whereof, I have 739
hereunto set my hand ond affixed the seal of this office, at Havana, this 9th day of January A. D., 1890.

Consulate General of the United States of America, Havana. I, the undersigned, Consul General of the United States of America, at Havana, Island of Cuba, do hereby certify that the foregoing and annexed document is the original certificate made by me on the 9th of January last, certifying to certain proceedings of extradition against Don Federico Prado, Don Luis de Oteyza y Cortez and others, but which was withdrawn by me on the 18th day of January, annulling by signature thereto and substituting therefor the certificate which now appears with the said proceedings under said 740
date of January 18, 1890. Given under my hand and official seal at Havana, the 12th day of February, 1890. Ramon O. Williams, Consul General. (Seal.)

COMPLAINANTS' EXHIBIT 28 A, FEBRUARY 19, 1890.
E. H. C., STEN.

Consulate General of the United States of America at Havana, Island of Cuba. I, the undersigned, Consul-General of the United States of America at Havana, Cuba, do hereby certify that the signature to the foregoing and annexed document, of Don Venancio Zorilla 741
y Arredondo, President of the Superior Court of Havana, to which is also affixed the seal of said Court, certifying to the signature of Don Aniceto de Palma y Lujan, Associate Justice of said Court, charged with the proceedings against Don Federico Prado, Don Luis de Oteyza y Cortez, and others, for embezzlement of public funds and of Don Emilio Valdes Valenzuela, appointed Clerk of said Court in said proceedings, to

742 be, in my opinion, true and genuine, and in the handwriting of the said Don Venancio Zorilla y Arredondo, President of the Superior Court of Havana. I also certify that the signature of Don Manuel Salamanca y Negrete to the said document, to which is affixed the seal of the General Government of the Island of Cuba, is in my opinion, the true and genuine signature of His Excellency, the Governor General of the Island of Cuba. And I do further certify that the foregoing and annexed warrant of arrest, has been in my opinion, thereby properly and legally authenticated so as to entitle it to be received as evidence by the Tribunals of Spain and of the Island of Cuba. In witness whereof, I have hereunto set my hand and affixed the seal of this Consulate
743 General, at Havana, the 9th day of January, 1890.

[SEAL.]

Consulate General, of the United States of America, Havana. I, the undersigned, Consul General of the United States of America, at Havana, Island of Cuba, do hereby certify that the foregoing and annexed document is the original certificate made by me on the 9th of January last, certifying to certain proceedings of extradiction against Don Federico Prado, Don Luis de Oteyza y Cortez, and others, but which was withdrawn by me on the 18th day of January, annulling my signature thereto and substituting therefor the certificate which now appears with the said proceedings under
744 said date of January 18, 1890. Given under my hand and official seal at Havana, the 12th day of February, 1890. RAMON O. WILLIAMS, Consul General.

[SEAL.]

COMPLAINANTS' EXHIBIT, 29A. FEBRUARY 26, 1890.
E. H. C., STEN.

Seal. N. 1,064,135.

Ministry of the Colonies: Royal Order 681: To Your

Excellency: The President of the Tribunal of Accounts 745
of the Kingdom on the 10th instant has addressed to this Ministry the following communication. To Your Excellency: This Tribunal having all its members present have examined the Royal Order that Your Excellency was pleased to forward to me on the 2d of September last, whereby you were pleased to make known the instructions that had been addressed to the Governor General of the Island of Cuba, as the procedure that should be observed in order to ivestigate the responsibility for and the repayment of the fraud committed apparently in divers offices of the Department of the Treasury of said Island aforesaid, by means of forged warrants, directed that it should be referred to the District Attorney and the latter has rendered his 746
opinion under date of January 31 last past, in the manner following: The District Attorney has examined the Royal Order issued by the Ministry of the Colonies under date of September 2d last past and states:

That the instructions of the Royal Order aforesaid while they show laudable zeal on the part of His Excellency the Honorable Minister of the Department aforesaid, in order to become informed as to the amount of the sum of which the Government has been defrauded and which fraud has taken place in some of the Bureaus of Administration of the Island of Cuba, make manifest the greatest interest that this Tribunal should take cognizance of that which is happening in 747
so serious a matter, for the purpose, undoubtedly that both authorities, within the sphere of their respective provinces should order the proper methods to establish the actual peculation, and to effect the reimbursement thereof: but the undersigned observes that Rule 6th contained in the (parto dispositiva) mandatory part of the said Royal Order is not in harmony with the provisions in that regard of the Organic Law of this Tri-

748 bunal and the Regulations for its execution thereof, in that it provides that the Director General of the Treasury Department of said Island shall name an employee of the active Administration to examine the books and other antecedents of the "Ordination" and Office for Payments to formulate and forward the charges in documentary form to the parties presumptively responsible to continue the proceedings until the docket thereof shall reach a point of decision, in which state it is to be fowarded to the corresponding central office in order that the latter may decide what it deems proper, and that it may consult thereon with the Superior Governor to the end that it may
749 by him be approved. In order to become well convinced of this the following indications must be borne in mind: *First:*—That the fraud in question is based on warrants issued apparently, but certainly with the intermediation of, and that were paid by public employees with government funds. *Second:*—That the aforesaid fraud constitutes an actual speculation and the persons presumptively liable therefor are those who ordered, intervened as to, and paid the warrants that originated such defrauding, according to the provisions of Article 16 of the Law of Accountability of February 20, 1850, ordered to be in force in the Colonies by Decree of June 2d, 1851, and of Article 14, 15 and 16 of Instructions as to Accountability of the Provinces of the
750 Colonies, of October 4, 1870. *Third:*—That the aforesaid fraud having been discovered outside of the Court of Accounts, cognizance of the Docket of Proceedings relating to reimbursement is of the special province of this tribunal, as is set forth in Article 16 of the Organic Law aforesaid under Section 3, and the superintending and directing of the same devolves upon the 3rd Section of such Court, in accordance with the provisions of Article 29 of the Organic Law above mentioned.

Fourth:—That the proper investigator of the Docket of Proceedings in question is the Chief of the parties presumptively responsible and none other, this being clearer and absolutely provided in Article 51 of the said Organic Law, and 94 of the before mentioned regulations; it being the duty of said official to continue the proceedings according to the Provisions of said Law and Regulations until a decision be reached, at which stage in accordance with the Provisions of the last part of Article 61 above cited and of the Decree of May 29, 1872, in which state he shall forward the same to the Central Office in order that the latter may determine as it considers proper, taking care to consult with the Secretary of this Court, in case it show no liability and may prejudice the interests of the Treasury Department, according to the Provisions of Article 95 of the said Regulations; this not being within the province of the Superior Governor of the said Island as said Rule 6th provides. It therefore appears clear to the District Attorney: 1st. That the power which said Rule 6th confers upon said Direction General of the Treasury Department to appoint an Investigator for the purpose of preparing the Docket of Proceedings relating to the reimbursement by the parties presumptively responsible of the supposed fraud who may be Public Employees, is not opposed to the Provisions of Articles 61 of the Organic Law aforesaid of Article 94 of the Regulations, because according to said Articles the Investigator must necessarily be the Chief of the parties responsible unless it should result that he is legally incapacitated to act. 2nd. That the duty of said Rule 6th imposes upon the Central Office to forward the decision which it may give for approval by the Superior Governor of the Island is likewise opposed to the Provisions of Article 95 of the Regulations aforesaid; 3d: That even supposing that said Direction should ap-

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754 point as an Investigator of the Docket of Proceedings for the reimbursement the Chief of the party or parties presumptively responsible, in accordance with the said Articles 61 and 94, inasmuch as the proceedings would not be carried on under the superintendence of the 3d Section, whose province it is to take charge of such Docket of Proceedings, according to the 29th Article of the said Organic Law, the inevitable result would be to carry out the before-mentioned Rule 6th of the Royal Order in question, in which case said Central Office would usurp the exclusive powers of said Section of the Court. Hence the District Attorney is of opinion that for the reasons above set forth said Rule 6th cannot be
755 carried out without infringement of the law, and it would be useless to answer to this reasoning that the said Royal Order does not curtail the powers of said section, but that on the contrary it leaves free its jurisdiction, in order that it may determine what it may deem proper; for it being a principle of law that no party presumptively liable shall be subjected to a double administrative proceeding as to reimbursement for the same thing, since he must be subjected only to one, and inasmuch as this latter must be the proper one, and in the present case such proper one is the chief of the parties presumptively responsible under direction of the respective Central Office and under the superintendence of said section, said chief is alone and exclu-
756 sively the person to take charge of the proceedings for reimbursement. It results therefore that excluding what has been above set forth of an administrative character with reference to Rule 6th, all else which is prescribed by the said Royal Order is governmental and must therefore be carried out with exactness in the manner ordered, by virtue of the powers which the law confers upon the Honorable Minister; and the undersigned further adds that if it should result that the

parties presumptively responsible for the peculation in question, should not be public employees, in such case the Minister has full powers to enforce the execution of the Provisions of the Royal Order referred to, and in a governmental manner to adopt such as he may think proper. Wherefore, and in view of the fact that the 3d Section has cognizance of the Fraud referred to in said Rule ordered, and in view of the fact that by its order said Ministry issued an opinion under date of October 7th last past, stating who was the proper person who should prepare the Docket of Proceedings and the carrying on of the same, which communication is herewith produced, the undersigned is of opinion that the proper course to pursue is to communicate this to his Excellency the Minister of the Colonies, by means of a respectful communication to call the attention of the 3d Section thereto, in order that it may issue an order to said Direction General that it may not carry out that which with reference to the carrying on of the matter in question has been ordered. This is the opinion of the District Attorney, but the Court—*in banc*—in its better judgment will decide what may be proper. The Court —*in banc*—being in accord with the opinion above set forth has determined to communicate the same to your Excellency, as I now have the honor to do. In view of the preceding communication, and taking duly into account the contents of the communication addressed by your Excellency to this Ministry on the 5th and 15th days of October last, his Majesty the King, whom God preserve, has determined to communicate the following: To the Governor General: 1st: *That the Royal Order of September last past in its governmental character in nothing changes the legal precepts which with all force and vigor govern the matter*, and that therefore the interpretations that those offices of the Treasury Department have given thereto is not strictly correct.

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760 2d: That whatever is provided in Rule 6th of the Royal Order cited shall be of no effect. I communicate the above to your Excellency for its purposes, and in answer to your two communications aforesaid of the 5th and 15th of October last. God preserve your Excellency many years. Madrid, February 26, 1882. Leon y Castillo. To his Excellency the Governor-General of the Island of Cuba. * * * *

COMPLAINANTS' EXHIBIT 30, FEBRUARY, 26, 1890. E. H. C, STEN.

761 Exhibit 30. Article 4, section 3, of the Additional Law to the Organac Law of the Judicial Part.

Exhibit 30. Article 4. Besides the matters to take cognizance whereof the Law of Criminal Procedure confers Jurisdiction on the sections and on the Superior Courts in criminal matters on the Territorial Superior Courts and Supreme Court, they shall also take cognizance. The sections in the criminal part of the Territorial Superior Courts of cases relating to crimes committted in the exercise of their offices within their respective territory. 1st. * * * 2d. * * * 3d. By the adminstrative authoritive of the same places except Civil Governors.

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COMPLAINANTS' EXHIBIT 31A, FEBRUARY 26, 1890. E. H. C., STEN.

From Defendants' Exhibit 13, February 19, 1890. Article 2. In accordance with the provisions of the past preceding article the redeemable debt shall be sub-

divided into two classes and shall be represented by 763
bonds to bearer in the form following:

Series.	Capital Dollars.	Annuity Dollars..
A	25	0 '75
B	50	1 '50
C	100	3
D	200	6
E	500	15
F	1000	30
G	2000	60
H	5000	150

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COMPLAINANTS' EXHIBIT, 32A, FEBRUARY 26, 1890. E. H. C., STEN.

ARTICLE V.—Notwithstanding the provisions for the two preceding articles such civil questions as are of a preliminary objectionable character and relate to the validity of Matrimony or of the suppression of the Civil State shall be referred always to the Judge or Tribunal that is to take cognizance of the same, and its decision shall serve as a basis for the criminal Tribunal.

ARTICLE VI.—If the question of Civil preliminary ob- 765
jectionable character relate to the right of ownership as to real estate or other real right the Criminal Tribunal shall have the right to decide thereto when such rights appear founded on a genuine title or on indubitable acts of possession.

766 COMPLAINANTS' EXHIBIT 33, FEBRUARY 26, 1890. E. H. C., STEN.

Translation of Article 383 of the Penal Code for the Island of Cuba and Porto Rico (Official edition for the year 1886). Promulgated by Royal Decree, dated May 23, 1879. The Public Officer who shall abandon his office, without his resignation having been accepted, leaving the public interests in a prejudicial state, shall be punished with suspension, in its grades of maximum and minimum. If the abandonment of his office is made so as to prevent the prosecution and punishment of the crime comprised in Titles 1 and 2 of Book 2 of this Code, the penalty of correctional imprisonment in its
767 minimum and medium degree shall be imposed upon the guilty person and of the greater arrest if he had as his object the preventing, prosecuting or punishing of any other class of crime.

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DEFENDANT'S EXHIBIT A 1, FEBRUARY 19, 1890. 769
E. H. C., STEN.

Direction as to the attributes and relations of the general and central offices of finance of the Island of Cuba, published in the *Gaceta de la Habana*, July 23d, 1886. (Stamp), Havana. Printing Office of the Government and of the Captain-General for His Majesty, 1886.

Direction as to the attributes and relations of the general and central offices of finance. SECTION FIRST, CHAPTER 1. *Classification of Offices.* ARTICLE 1. The direction and executive management of the Department of Finance of the Island of Cuba is in charge of Superior, General, Central, Provincial, Special and Local 770
offices. The Superior office is the Intendency of Finance. The General office is the Intervention of State. The Central offices are: the Administration of Contributions, Taxes and Properties; the Administration of Customs; the Administration of Landed Rents and Lotteries; the Controller's office; the Treasury, and the office of Secretary of the Board of Debt. SECTION SECOND, *Official Rules for each office. Office of the Secretary of the Board of Debt.* ARTICLE 107. This is the office charged with the preparation and expediting of the claims for unpaid credits against the Treasury which should be liquidated in bonds of the debt, in accordance with the law of July 7, 1882. ARTICLE 108. The Secretary-Con- 771
troller shall decree the claims for the purpose of registry in chronological and alphabetical order, and shall distribute them, as may be proper, among the respective bureaus. He shall examine into the personality of the parties interested in each claim, demanding, when necessary, the powers of attorney or authorizations in legal form, proof that the grantors are living, proof of wills, the judicial declaration of intestates, deeds of

772 transfer, and documents which may prove the credit, &c., as the case may be. After the personality of the claimants has been established, he shall transmit the proceedings with a decree which shall be supplied officially, to the Centres of Finance, wherein may exist the basis for a declaration and liquidation of the credits; or officially through the Intendent if it relates to the offices of other branches. ARTICLE 109. The Centres of Finance, or the sub offices of the other branches, shall return the proceedings, with a report duly considered and founded, admitting or refusing the credit claimed and liquidating its amount, annexing thereto the proofs which may serve to establish its legitimacy and origin.

773 ARTICLE 110. These proceedings shall be transmitted to the Commissions of the Board, in order that they may report upon their examination, liquidation and conversion in bonds of the debt. ARTICLE 111. The secretary shall communicate to the Board the reports of the Commission, in order that it may pass upon the same, incorporating it in the record; he shall issue a certificate which he shall annex to the proceedings. These certificates shall be the voucher for the warrants which, as Controller of the Debt, he shall issue for the delivery of bonds, the day appointed by the Intendent for payment. ARTICLE 112. The payments having been appointed, the warrants shall be presented to the chief "Ordenador," in order that he may authorize and examine the same on

774 behalf of the Intendent, after which they shall pass to the Treasury to be paid in bonds. ARTICLE 113. The office of the Controller of the Debt shall prepare the special account relative to the issue, exchange, redemption and interests of the bonds. ARTICLE 114. The original proceedings wherein it may have been determined by the Board to recognize and convert the credits, shall, together with all accompanying data, remain in the archives of the office of the Secretary, in

order to serve for the investigations of the accounts 775
which may be made the day of the examination.
ARTICLE 115. The Controller of the Debt shall keep the administrative account necessary for the indentification of the credits claimed, of those recognized, of those converted or paid, and of those pending the recognition of payment. He shall keep the books of issue of bonds by series of each class of debt, the number of coupons issued therewith, the redemption and payment of interests. He shall prepare reports as to the condition of the debts taken from the books of account before cited; and he shall publish the same in the Gaceta, remitting copies to the General Intervention and to the Department of Foreign Affairs. ARTICLE 116. The Controller of the 776
Debt, as Deputy of the General "Interventor," shall through him render a special account of bonds, and shall furnish him with all the data which he may demand for the intervention and proceedings of inspection of matters of the debt. He shall periodically remit to him detailed notes of his opinion with reference to estimates and treasure operations for the credits converted into bonds of the debt, in order that the same may have the effect of reports of payment and may produce the consequent reduction in the accounts of public expenses for the corresponding years wherein they may appear as due and pending in accordance with the laws of accounts. These reports with respect to the operations of the treasure shall produce similar reductions, in order 777
that the Intervention may be able to know its bookkeeping and the true situation of the treasure. The Controller's office of the Debt shall send similar reports of payment to the special "Ordenaciones" of War and Navy, with respect to the corresponding sections as to the estimate, in order that the same may have effect in the partial accounts of public expenses of those branches. ARTICLE 117. During such time as the office

778 of the Secretary has no special Treasurer for the custody of effects, the Controller of the Debt, the Central Treasurer and the chief "Ordinado" of the Intendant's office shall be keyholders of said values since they are ones who authorize the payment of the debt, and since the bonds are kept in the custody of the Central Treasurer.

DEFENDANT'S EHIIBIT B 1, FEBRUARY 19, 1890.
E. H. C., STEN.

Law for the settlement of the public debt of the
779 Island of Cuba, and by-laws for the board created by virtue of said law of July 7, 1882. Approved at the meeting of September 28th, of said year by the said board. (Stamp.) Havana. Printing Office of the Government and of the Captain-General for His Majesty, 1882.

LAW OF JULY 7TH, 1882. ARTICLE 1. Bonds of redeemable debt shall be issued in sufficient quantity to convert the debts of the Treasury of the Island of Cuba, represented by bonds of said Treasury, resulting from the subscription authorized by decree of January 31st, 1873, redeemable and now payable, or which may to-day be in circulation, on account of services and material contracted before July 1st, 1878, such as are payable in
780 metal shall be estimated at par, and such as are payable in bank notes of Havana shall be estimated at fifty per cent., etc. ARTICLE 4. For the purpose of paying the semi-annual accrued interests during twenty-five years, to be counted from July first of the current year of 1882, the following shall be converted into annuities of the value of ten and five dollars; Treasury notes of the Island of Cuba of the issue of July 9th, 1874, the balance of the loan called "Valmaseda;" etc., etc.

ARTICLE 7. The examination, liquidation and conversion of the credits mentioned in Articles 1 and 4 of this law, as also the issue of the new redeemable floating debt, shall be made by a board to be known as the "Board of the Public Debt of the Island of Cuba." This Board shall be composed of the Governor-General as President; of the Director-General of Finance, who shall act as Vice-President; of the Controller-General, the Paymaster-General, the Treasurer-General of Finance, the first Sub-Governor of the Spanish bank, the Military Intendent, the Paymaster of the Navy, the Inspector-General of Public Works, the Legal Adviser of the General Direction of Finance, three persons of the class of first contributors appointed by the Governor-General and of three representatives elected by the said creditors, as voting members; a Chief of the Bureau of Finance to act as Secretary, without vote. 781 782

BY-LAWS, of the Board of the Public Dept. of the Island of Cuba. CHAPTER I. *Object and powers of the Board.* ARTICLE 1. The object of the Board created by the law of July 7th, of the present year is the examination, liquidation, conversion, and issuing of the new redeemable floating debt represented by the following credits against the Treasury of the Island of Cuba, to wit, etc. ARTICLE 4. Its powers are. *First.* To approve and disapprove the resolutions presented by the sections relative to the proof of the credits belonging to their respective jurisdictions. *Second.* To appoint a mixed Commission, consisting of two or more persons from each Section, for the purpose of revising a new and presenting opinion relative to the validity or invalidity of the doubtful credits which may have been submitted for its examination, in order that the Board may resolve as it deems best. *Third.* To demand from the offices thorough the Presidency, whatever data and information it may consider neces- 783

784 sary for the investigation of all cases requiring it, respecting the credits submitted for its approval. CHAPTER III. Duties of the Secretary. ARTICLE 8. The following shall be the duties of the Secretary of the Board: *First.* To prepare the minutes of the meetings of the Board, in clear and simple terms, specifying always the numbers of the credits which may have been approved, disapproved or declared to be pending. *Second.* By order of the President, to give account of the liquidations or records remitted by the Sections of the final approval of the Board. *Third.* To note in one book, setting forth therein the number and proof thereof, the credits definitely approved which proceed from operations of the Treasury; in another book, those
785 which correspond to obligations of the estimate for services; and in another the ones in like manner corresponding to material, observing the requisites set forth. *Fourth.* He shall keep separately a book or register wherein he shall note, with precision and clearness, the receipt and issue of documents; setting forth in the column of observations the idenity of the persons from whom they are received and to whom they are returned and on what dates. *Fifth.* In the offices, when necessary, to attend to the sending of the documents of proof which may have been demanded of him. *Sixth.* To prepare all the documents or memoranda relative to the Board and which the President may order.
786 ARTICLE 9. The Secretary shall have the power to make such suggestions to the Board as may tend to explain any doubtful point which may be discussed; and as well to the Board as to the Sections when necessary, he shall give whatever explanations they may demand when the same are within his duties. ARTICLE 10. He shall make the calls for special meetings and do whatever else he may be ordered by the President relative to the service which he renders.

DEFENDANT'S EXHIBIT C 1, FEBRUARY 19, 1890. 787
E. H. C., STEN.

Constitution of the Spanish Monarchy promulgated in the Island of Cuba, May 1st, 1881. (Representation of the Royal Arms). Havana, Printing Office of the Government and of the Captain-General for his Majesty, 1888.

ART. 4. No Spaniard or foreigner shall be detained, except in the cases and in the form prescribed by law. ART. 5. No Spaniard shall be imprisoned except by virtue of the warrant of a competent Judge. Every person detained or imprisoned without the legal formalities, or except in the cases prescribed by the Constitution and the laws, shall be liberated at his own 788
petition or at that of any Spaniard. ART. 16. No Spaniard shall be proceeded against criminally, nor be sentenced except by a competent Judge or Court, by virtue of laws anterior to the crime and in the form by these prescribed.

DEFENDANT'S EXHIBIT D 1, FEBRUARY 19, 1890.
E. H. C., STEN.

Penal Code for the Provinces of Cuba and Puerto-Rico, and Provisional Law of Criminal Procedure, ordered to be observed by Royal Decree of May 23, 789
1879, Official Edition. (Representation of the Royal Arms.) Madrid National Printing Office, 1879.

TITLE VII. *Of the Crimes of Public Employes in the discharge of their duties.* CHAPTER III. *Unfaithfulness in the Custody of Documents.* ART. 371. A public officer who takes, abstracts or hides documents or papers confided to him by reason of his office, shall be punished as follows: &c., CHAPTER X. Mal-

790 versation of Public Funds. ART. 401. A public officer who having charge of public effects or funds—by virtue of his office, takes or allows others to take the same, shall be punished as follows: &c. * * * ART. 402. A public officer who by his abandonment or inexcusable negligence should give occasion to another person to take the public funds or effects referred to in Sections 2, 3 and 4 of the preceding Article, shall be punished, etc. ART. 403. An officer who, causing damage or interruption to the public service, appropriates to his own uses or those of others the funds or effects placed under his charge, shall be punished, etc. ART. 404. A public officer who diverts the funds or effects which
791 he administers to some other public purpose than that for which they were destined, shall be punished, etc. ART. 405. A public officer who, being under obligation to make payment, as holder of funds of the State, fails to make said payment shall be punished, etc. ART. 406. The provisions of this Chapter extend to persons who may be entrusted with any kind of funds, rents or effects, provincial or municipal, or belonging to an educational or charitable institution, as also to the administrators or depositaries of goods attached, sequestrated or deposited by public authority, even though the same belong to private persons. CHAPTER XI. *Frauds and Illegal Exactions.* ART. 407. A public officer who, intervening by reason of his office, in any commission
792 relative to supplies, contracts, adjustments or liquidations of effects or public property, concerts with the parties interested or speculators or makes use of any other artifice, for the purpose of defrauding the State, shall be punished, etc. ART. 408. A public officer who, directly or indirectly, interests himself in any kind of contract or operation, wherein by reason of his office, he should intervene, shall be punished, etc. This provision is applicable to private experts, arbitrators and

accountants with respect to the goods or things in the 793
appraisement, partition or adjudication whereof they may have intervened ; also to tutors, guardians, administrators and executors with respect to the belongings of their pupils or estates.

DEFENDANTS' EXHIBIT E 1, FEBRUARY 19, 1890, E. H C. STEN.

DEPARTMENT OF FOREIGN AFFAIRS. Law of Criminal Procedure for the Islands of Cuba and Puerto-Rico Official Edition. (Representation of Royal Arms.) Madrid. Printing office of Raman moreno y Ricardo Rojas. 794
Street of Isabel la Catolica No. 10. 1888.

BOOK FIRST, *Title I, Chapter II, Prejudical Questions.* ART. 3. As a general rule the jurisdiction of the Tribunals charged with the adiministration of penal justice shall extend to a determination, for the purposes of punishment only, of the civil and executive judicial questions presented by reason of the acts under investigation when such questions shall appear to be so intimately connected with the punishable act as to be rationally incapable of separation. ART 4. Nevertheless, if the prejudical question be determinative of guilt or innocence, the criminal tribunal shall delay proceedings until the determination of said question by whom- 795
ever may be proper, etc. ART. 7. In the determination of prejudicial questions which may arise by reason of the preceding articles, the Criminal Court shall be controlled by the rules of the civil and administrative law respectively. *Title II, Jurisdiction of the Criminal Courts and Judges. Chapter 1. Rules for Determining the Jurisdiction.* ART. 10. "The ordinary courts shall have jurisdiction of all criminal causes and judg-

796 ments, with the exception of the cases reserved by the laws to the Senate, to the tribunals of war and navy, and to the executive or police authorities." ART. 14. Excepting as to the cases reserved to the Senate, and as to those which the laws expressly and distinctly assign to the supreme tribunals, to the Territorial Audiencia, to the Courts of War and Navy, and to the Executive or police authorities" (the following ordinary tribunals) "shall, as a general rule, have jurisdiction;" etc. BOOK SECOND, *Title VI, Chapter III. Of Provisional Imprisonment.* ART. 503. In order to decree provisional imprisonment, the following circumstances shall be necessary: 1st, There shall appear in the cause the commission of an act having a criminal character. 3d.
797 There shall appear in the cause sufficient reasons for believing that the person against whom the warrant of arrest is to be ordered is criminally responsible. BOOK SECOND, *Title XI, Chapter II, of Discontinuances.* ART. 637. There shall be a free discontinuance: 3d. When the parties prosecuted as principals, or accessories, shall appear to be exempt from criminal responsibility. BOOK THIRD, *Title II, of Matters for Preliminary Determination.* ART. 666. Only the following questions or exceptions shall be matters of preliminary determination. 5th. The lack of executive authority authorizing the prosecution in cases where this may be necessary according to the constitution, or to special laws.
798 BOOK FOURTH. *Title VI. Proceedings for Extradition.* ART. 824. The District Attorneys of the Audiencias and of the Supreme Court, each in his case and place, shall ask that the judge or tribunal propose to the Government to solicit the extradition of the parties prosecuted or condemned by final sentence, whenever this shall be proper and lawful. ART. 825. In order to ask or to propose extradition, it shall be a necessary requisite that there shall have been decreed a warrant of arrest, duly

founded on reasons assigned, or that there shall have been rendered a final sentence against the accused referred to. ART. 828. The Judge or Court having cognizance of the cause wherein the defendant who is absent in foreign parts is being prosecuted shall be the competent one to ask for his extradition. ART. 831. The extradition petition shall be made in the form of letters Rogatory addressed to the Secretary of Foreign Affairs. 799

DEFENDANT'S EXHIBIT, F 1, FEBRUARY 19, 1890, E. H. C., STEN.

COMMERCIAL CODE. OFFICIAL EDITION. (Representation of the Royal Arms). Madrid, 1885. 800

TITLE V. *Section 1. Of Commercial Exchanges.* ART. 64. Legally authorized public establishments wherein merchants and intermediate collegiate agents ordinarily meet for the purpose of concerting or carrying out the mercantile operations mentioned in this section, shall be called Commercial Exchanges. ART. 65. The government shall have power to establish or authorize the creation of commercial exchanges, where it may deem proper. Companies formed in accordance with this code, shall also have power to establish them whenever the power so to do shall be one of the objects of the company. Nevertheless, in order that the quotation of the operations realized and published in this class of exchanges shall have an official character, it shall be indispensable for the Government to have authorized said operations before they have commenced to be the subject of public contract accredited by the quotation. The Government shall have the power to grant said authority, receiving first the reports which it may deem necessary, respecting its public convenience. 801

802 ART. 67. The following shall be matters for contract at exchanges: 1st. Public values and effects. 2nd. Industrial and commercial values issued by private individuals or by associations or companies legally constituted. 3rd. Etc., etc. The values and effects referred to in numbers 1 and 2 of this article shall be included in the official quotations only when their negotiation has been authorized according to Article 85 in the exchanges of private creation, or when they have been declared negotiable by the exchanges of official creation. ART. 68. In order to include public effects in the official quotations referred to in the preceding article, there shall be comprehended under this term: 1st. Those
803 which by virtue of an issue represent credits against the State, the provinces or the municipalities, and are legally recognized as negotiable in the exchange. 2nd. Those issued by foreign nations, if their negotiation has been duly authorized by the Government after decision by the Syndicate Board of the College of Agents of Exchange.

DEFENDANTS' EXHIBIT G 1, FEBRUARY 20, 1890, E. H. C., STEN.

Malversacion.—El acto de distraer caudales ajenos en usos diferentes de aquellos para que estan destin-
804 ados. El malversador tiene que responder de su administracion. (TRANSLATION). *Malversacion.*—The act of diverting the funds of others to uses different from those for which they were intended. The party committing the malversation must answer for his management of said funds.

Peculado.—Hurto de caudales del erario publico, hecho por las perse nas que intervienen en ellos. Este delito se halla taxativamente comprendido en el Codiga

Penal bajo el epigrafe de *malversacion de caudales publicos.* Art. 405 al 410. (TRANSLATION). *Peculado.* —Larceny of funds of the public treasury, committed by persons having the custody thereof. This crime is limitedly comprehended in the Penal Code under the heading of "Malversation of Public Funds." Arts. 405 to 410. 805

Novisimo Diccionario Legislation y Jurisprudencia, por Don Epifanio Sanchez de las Matas.

DEFENDANT'S EXHIBIT H, FEB'Y 20, 1890.
E. H. C., STEN.

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Malversacion. La inversion de caudales en usos distintos de aquellos para que estan destinados. El malversador es responsable de su administracion. (Translation.) *Malversacion.* The use of funds for different purposes than those for which they were intended. The party committing the malversation is responsible for his management of said funds.

Peculado. La sustraccion de caudales del erario public, he cha por les mismas personas que los manejan. (Translation.) *Peculado.* The taking of funds of the public treasury by the same persons who have the management thereof. (Rational Dictionary of Legislation and Jurisprudence, by Eschirche.)

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DEFENDANT'S EXHIBIT I, Feb. 26, 1890, E. H. C., STEN.

Malversacion.—f. Accion y efecto de Malversar. *Malversar.* (Del. lat. *male*, mal, y *versare* volver.) a. Invertir ilicitamente los caudales ajenos que uno tiene a su cargo, en uses distintos de aquellos para que esten

808 destinados. *Peculado.* (Del lat. *peculatus*, de *peculium* caudal.) m. For. Delito que consiste en al hurto de caudales del errario publico, hecho por aquel a quien esta confiada su administracion. (Diccionario de la lengua Castellana por la Real Academia Espanola.)

TRANSLATION OF ABOVE.—*Malversacion.* The act or effect of "Malversar." *Malversar.* (From the Latin *male*, wrong, and *versare*, to convert.) To unlawfully divert to uses other than those for which they are intended, the funds of others in one's charge. *Peculado.* (From the Latin *peculatus* ; from *peculium*, money) M. *For.* A crime which consists of the larceny of funds belonging to the public treasury, committed by him to
809 whom the administration thereof is confided. (Dictionary of the Spanish language by the Spanish Royal Academy.

DEFENDANT'S EXHIBIT K, FEBRUARY 19, 1890.
E. H. C. Sten.

[SEAL.] (N. O. 146, 310.)

Nunes. (Rubric.) (Notarial Seal.) Act of record of the legal opinion of various lawyers. Number four. In the City of Havana, on the 7th day of January, 1890, before me Alejandro Nunes de Villavicencio y
810 Alvarez, a Notary Public of the College and District of this capital, whereof I am a resident, in the presence of the witnesses Mr. Juan de Dios Ojeida y Cremadells and Mr. Federico Verdes y Fernandez, residents of this place, duly qualified to act as witnesses and requested so to do ; appears Dr. Miguel Gener y Rincon, a native of this city and province, forty-one years of age, married, a lawyer, residing at No. 2 in the street of Mercaderes ; who presents his personal certificate of

the 9th Class, authorized by the Justice of the Ward of 811
Monserrat, on the 30th day of April, of the year last past, under No. 4250, which I return to him; who gives assurance that he is in the full enjoyment and exercise of his civil rights; whom I, the Notary, hereby certify to be personally known to me, whose profession and residence are also known to me, whom I find in my judgment with the necessary capacity to execute the act of record as to the legal opinion of the lawyers hereinafter set forth, and who declares:

First.—That the is he attorney for Mr. Luis de Oteiza y Cortes, as appears by the power of attorney which was executed in his favor on the 21st day of July, 1886, under No. 599, before the Notary of this Capital, Mr. 812
Carlos Amores y Sauz, which power of attorney he swears has not been revoked nor in any manner limited, which confers, among other faculties contained therein, the following, namely: to represent him judicially whenever it may be necessary, before any authorities, judges, or tribunals, in matters governmental, voluntary, contentious, or administratively—contentious, suits, causes and universal judgments, civil and criminal matters, instituted or to be instituted by or against him, to present complaints and accusations, and whatever demands may be proper or his rights may require; all of which appears in the copy of said power of attorney issued by the said notary on the 4th of the present month, which said power of attorney is literally in- 813
serted in an act which with reference to another matter, was executed before the subscribing notary yesterday. That, as such attorney, he desires to record the following legal opinions of various Spanish lawyers who practice their profession in this Capital, with respect to the matters hereinafter set forth. 1st. According to the Spanish laws which are in force in the Island of Cuba, the ordinary tribunals are not competent and have no

814 jurisdiction to take cognizance of the crimes of defalcation or embezzlement of public property, of forgeries, etc., committed by officials of the administration of the State in the exercise of their functions, until a preliminary administrative record shall have been substantiated and terminated, wherein the parties presumptively liable shall have appeared and wherein either personally or if absent, then by attorney, they shall have been able to present answers in their justification, and until after this requisite shall have been complied with, the matter cannot pass to the ordinary tribunals, nor can these latter exercise any jurisdiction or be competent to proceed against said officials. 2d. That the laws or legal dispositions which provide what is embraced in the preceding
815 paragraph, are the following: The Royal order of September 2d, 1881, Chapter 9 of the Regulations of the "Carreras Civiles de Ultramar," on June 3d, 1876; royal decree and regulation of September 12th, 1878, regarding the authority to institute criminal proceedings against public officials; Articles 16, 20, and 21 of the Ley Organica of the Court of Accounts of the Kingdom, dated June 3d, 1870; Articles 94 and 97 of the regulations of said tribunal; Articles 66, 67, and 68 of the regulations of the public treasury of November 8th, 1871; Articles 22 and 70 of the provisional law of administration and accountability of June 25th, 1870; Articles 171, 172, and 185 of the same instructions of October 4th of the said year
816 for the purpose of giving effect to the decree of accountability of the department of Foreign Affairs, dated September 12th prior; and Articles 4, 10, and 14 of the law of criminal procedure. 3rd. That, according to Article 4 of the Constitution of the Spanish Monarchy, at present in force, no Spaniard nor foreigner shall be detained, excepting in the cases and in the manner prescribed by law. 4th. That according to Article 5 of said constitution, no Spaniard

shall be imprisoned excepting by virtue of an order of a competent Judge, and every person detained or imprisoned without the legal formalities, or excepting in the cases provided for by the Constitution of the laws, shall be placed at liberty upon his petition or that of any Spaniard. 5th. That according to Article 16 of said Constitution, no Spaniard can be proceeded against criminally nor sentenced excepting by the Judge or tribunal having jurisdiction therein, by virtue of laws prior to the crime and in the form by these prescribed. 817

SECOND. That the lawyers practising their profession in this city, whose legal opinion upon the matters contained in the preceding article he desires to record under oath, are the following: Mr. Antonio Mesa y Domingues, Accounting Secretary of the Illustrious College of Lawyers, First Secretary of the Circle of Lawyers and Provincial Deputy; Mr. Jose Sedano y Agramonte, Treasurer of the Circle of Lawyers, ex-Municipal Judge of this city, Counsel of the Society of Workmen of this city, author of various works of law; Mr. Gaston Mora y Varona, publicist, and Dr. Benito Vidal y Gregori, who is also a lawyer of the State of Louisiana in the United States of America. 818

THIRD. That therefore he requested me, as Notary, to proceed to the offices of the said lawyers, and explaining to them the object of this record, to make appear therein the sworn declaration of each one, delivering as many certified copies as he may need for the use of his client, Mr. Oteiza y Cortes. I, the notary, by virtue of the premises, have prepared this act of record of legal opinions in order to carry out the petition of Mr. Miguel Gener y Rincon, as attorney of Mr. Luis de Oteiza y Cortes, and the same having been read by him and by the witnesses, the first mentioned ratified the contents thereof, signing it with those last mentioned, that is to say, with the witnesses, who are also person- 819

820 ally known to me and whose capacity I know. To all of which I do hereby certify, as also to the corrections made and to the conformity of the deponent and witnesses, which corrections having been examined and approved, are as follows: before, any, correct. Dr. Miguel Gener, Juan de D'Ojeda, Federico Verdes. Signed, Alejandro Nunes. A seal which says: Alejandro Nunes de Villavicencio, Notary Public. Nihil Plus Fide, Havana. PROCEEDING. At Havana and immediately succeeding the above on the same 7th day of January of 1890, I, the Notary, in order to comply with the solicitation contained in the preceding record, went to the house occupied by the College of lawyers of this capital, to the secretary's office
821 thereof, which position is filled by the lawyer, Mr. Antonio Meza Domingues, who, being present, was by me instructed as to the purpose of this proceeding, to whom I read in full the said record, in order that with reference to the five legal points therein set forth, he should declare under oath his opinion as a lawyer in view of the laws actually in force in this island; he thereupon declared that his opinion as a lawyer was entirely in accord with that set forth respecting the five legal points upon which he was consulted, and that said opinion is the same which he has expressed to all those who have consulted him with reference to such matters in the various cases which, during the twelve years that
822 he has practiced his profession, have presented themselves; he thus declares, under oath, in the form required, and signs before me, as I do certify. L. Antonio Meza y Domingues. Alejandro Nunes. Rubricated. Another. At Havana, and immediately thereafter, on the said 7th day of January, 1890, I, the Notary, in order to comply with the record referred to, went to the house No. 53 in the street of Prado, residence and office of the lawyer, Mr. Jose Sedano y Agramonte, who being

present was by me duly instructed as to the purpose of 823
this proceeding, to whom I read in full the record executed by Mr. Miguel Gener y Rincon, as attorney for Mr. Luis de Oteiza y Cortes, in order that with respect to the five legal points therein set forth he might declare under oath his opinion as a lawyer, according to the laws in force in this island; thereupon he declared that his opinion as lawyer was entirely in accord with that set forth in the five legal points referred to, upon which he was consulted, and is the same which he has expressed to all who have consulted him upon such matters in the various causes which, during the time that he has practiced as a lawyer, have been presented to him; he thus declares under oath in the required form, 824
and signs with me as I do certify. L. Jose Sedano y Agramonte. Alejandro Nunes. Rubricated. Another. At Havana, and immediately thereafter, on the same 7th day of January, 1890, I, the Notary, in order to comply with the record heading these proceedings, went to the house No. 56 in the street of Prado, residence and office of the lawyer, Mr. Gaston Mora y Varona, who being present, was by me instructed as to the purpose of this proceeding, was by me informed as to the record referred to, in order that, with respect to the five legal points set forth therein, he might declare under oath his opinion as a lawyer in accordance with the laws in force in this island; he thereupon declared that his opinion as a lawyer was entirely in accordance with that 825
set forth in the five points referred to, and upon which he was consulted, and that said opinion was the same which he had expressed to all who have consulted him upon like matters in the various cases which, during the time that he has been practicing his profession, have presented themselves. He thus declares under oath, in the form required, and signs before me, as I do certify.

826 L. Gaston Mora y Varona. Alejandro Nunes. Rubricated.

Another. At Havana, and immediately thereafter on the same 7th day of January, 1890, I, the notary, in order to comply with the record at the head of these proceedings, went to the upper stories of the house No. 21 of the street of Obispo, where is the office of Dr. Benito Videl y Gregori, a Spanish lawyer, having an office in this city, a lawyer also of the State of Louisiana of the United States of America, and lastly counsel of the Spanish Consulate at New Orleans, to the duties of which office he is not at present attending, for the reason that he has lief of absence ; said gentleman being
827 present, I instructed him as to the purpose of this proceeding, reading to him fully the said record, in order that with respect to said five legal points therein set forth, he might declare under oath his opinion as a lawyer, keeping in mind the laws in force in this Island ; he thereupon declared that his opinion as a Spanish lawyer, is entirely in accordance with what is set forth in the said five legal points, with reference to which he is consulted and is the same which he has expressed to as many as have consulted him upon such matters in the various cases which, during the ten years that he has practised his profession, have presented themselves to him ; he thus declares, under oath, in the form required, signing before me as I do
828 certify. Dr. Benito Vidal y Gregori. Alejandro Nunes. Rubricated. The above agrees exactly with its original, which under number four appears in the current protocol of my notary's office, reference to which is hereby made. At the request of Dr. Miguel Gener y Rincon, as attorney of the said Mr. Luis de Oteiza y Cortes, I issue this first copy upon four sheets of sealed paper, the first, of the 10th class, and the others of the 12th, a note thereof being made at the margin of the rec-

ord, which I stamp, seal and sign at Havana on the 829
7th day of January, 1890. Witnessed of seven oclu. Notary eighty ap. Not correct. (Signed) Alejandro Nunes (Rubric.)

Notarial seal. Stamp duly cancelled. Seal of the College of Notaries.

LEGALIZATION: We, the subscribing Notaries Public of this College, and residents of this place, do hereby certify that Mr. Alejandro Nunes de Villavicencio y Alvarez, by whom appears to be authorized the above copy of the record for the recording of the legal opinions of various Spanish lawyers practising their profession in this city, which said record was made yesterday at the petition of Dr. Miguel Gener y Rincon, as attorney of Mr. Luis de Oteiza y Cortes, is, as he is therein 830
called, our confrere that he uses a signature, seal and rubric the same as those which appear to be his, and that he is in the actual practice of his profession, nothing to the contrary appearing thereto. In testimony whereof, we issue these presents, sealed with the seal of our College, making the proper record thereof at Havana on the 8th day of January, 1890. Witnessed. like, not correct. Joaquin Lancis (Rubric.) Notarial Seal. Francisco de Castro (Rubric.) Vised, Senior District Judge V. Pardo.

Consulate General of the United States of America at Havana, Cuba. I, the undersigned, Consul General of the United States of America, at Havana, do hereby 831
certify, that Messrs. Francisco de Castro, and Joaquin Lancis, whose signatures and seals appear to the foregoing notarial certificate, to which are also affixed the signature of the Senior District Judge, Don Vuente Pardo, and the seal of the Royal College of Notaries, are duly authorized and commissioned Notaries Public of this city and resident therein. Given under my hand and official seal at Havana, this eighth day of January, 1890. Ramon O. Williams, Consul General. [SEAL.]

832 Consulate General of the United States of America, at Havana, Cuba. I, the undersigned, Consul General of the United States of America, at Havana, do further certify, that the foregoing documents are properly and legally authenticated as copies of original papers, so as to enable them to be received in the tribunals of Cuba, as evidence in defense of a charge of embezzlement, and as evidence in defense of said charge upon a preliminary hearing before a committing magistrate, and as evidence in defense of said charge in an extradition proceeding upon a hearing before a competent magistrate, and especially as evidence in all the cases enumerated where said charge of embezzlement is made
833 against Don Luis de Oteiza y Cortes. In witness whereof, I have hereunto set my hand and affixed the seal of this Consulate General at Havana, this eighteenth day of January, eighteen hundred and ninety. Ramon O. Williams (Rubric), U. S. Consulate General. [SEAL.]

DEFENDANTS. EXHIBIT L. Feb. 19, 1890. E. H. C. STEN,

[SEAL.] (N. O. 016.104).

834 I, Jose de Marcos Llera, Chief of the Bureau of the Third Class of the Secretary's Auditing office of the Board of Debt of this Island, and by virtue of an order of substitution, in charge of said Secretary's Auditing office, the incumbency of Mr. Luis de Oteiza y Cortes having terminated, do hereby certify that the office of Accounting-Secretary of the Honorable Board of Debt of this Island is not required to give bond, and that, therefore, there can be no doubt that Mr. Luis de Oteiza y Cortes did not give such bond. This certifi-

cate, answering as it does the 8th point contained in the petition presented to his Excellency the Intendent-General of the Treasury, by Mr. Miguel Gener, attorney for Mr. Luis Oteiza, I issue these presents by order of his superior authority, at Havana, on the 18th day of January, 1890. Jose de M. Llera (Rubric.) Vised, the Intendent-General, Urzais. Stamp, Notarial seal. Stamp, 543. 835

We, the undersigned, Notaries of the College of the Territory of the Audencia of Havana, and residents of said city, do hereby certify, that Mr. Jose de Marcos Llera, by whom the above certificate is issued, is at present filling the office of Accounting Secretary of the Board of Debt, and that Mr. Angel Urzais, by whom said certificate appears vised, is Intendent-General of this Island, actually filling said office ; that both use signatures similar to those which respectively authorize the said certificate and vise, which said signatures, by their resemblance to those which they are accustomed to use, we hold to be authentic, nothing contrary thereto appearing. And, for its legal effects, we issue the present certificate, sealed by the seal of our College, the appropriate registry thereof having been made in our books of record. Havana, January 18th, 1890. Joaquin Lancis (Rubric.) Notarial seal. Jose A. Portocarrero. Notarial seal. Stamp duly canceled. Seal of the College of Notaries. No. 127. Vised, by the Senior Dist. Judge, Pardo. 836 837

Consulate General of the United States of America, at Havana, Island of Cuba.

I, the undersigned, Consul General of the United States of America, at Havana, Island of Cuba, do hereby certify that the signatures to the annexed notarial document—to which are affixed the seal of the College of Notaries, and signature of Don V. Pardo, Senior District Judge,

838 are the true and genuine signatures and notarial seals of Messrs. Joaquin Lancis and Jose Antonio Portocarrero, who certify to the signatures to the preceding certificate of Don Jose Marcos Llera, the Secretary-Auditor (Secretario Contador) of the junta dela Denda, and the countersignature of Don Angel Urzais, the Intendent-General of Finance of this Island, together with the seals of said junta, and Intendency-General; that said Notaries are duly authorized and commissioned Notaries Public of this City, and that to all their official acts full credit and faith are due and given, as well in Court as thereout. And I do further certify, that the foregoing document is properly and legally authenticated, so as to entitle it to be received in the tribunals
839 of Cuba, as evidence in defense of a charge of embezzlement and as evidence of said charge upon a preliminary hearing before a committing magistrate, and as evidence in defense of said charge in an extradition proceeding upon a hearing before a competent magistrate and especially as evidence in all the cases enumerated where said charge of embezzlement is made against Don Luis de Oteiza y Cortes. In witness whereof, I have hereunto set my hand and affixed the seal of this Consulate-General at Havana, this twentieth day of January, eighteen hundred and ninety. Ramon O. Williams, U. S. Consul General. [SEAL.]

840

DEFENDANT'S EXHIBIT M, FEBRUARY 19, 1890, E. H. C. Sten.

[L. S.] No. 148,460.

Nunes (Rubric), Notarial Seal.—Record of Acts and Proceedings had before the Honorable Court of the Territory. Number Three.—In the City of Havana, on the 6th day of January, of one thousand eight hundred

and ninety, before me, Alejandro Nunes de Villavicencio 841
y Alvarez, Notary Public of the District and College of this Capital, wherein I am a resident, and in the presence of the witnesses, Mr. Juan de Dios Ojeida y Cremadells and Mr. Federico Verdes y Fernandez, residents of this place, duly qualified to act as such, and being requested thereto, appears Dr. Miguel Gener y Rincon, a native of this city and province, forty-one years of age, married, lawyer, and residing at No. 2 in the street of Mercaderes, who presents his passport of the ninth class, authorized by the Justice of the Peace of the Ward of Monserrato, on the 30th of April of the year last past, numbered 4250, which I returned to him; who gives assurance that he is in the full enjoyment and 842
exercise of his civil rights; whom I, the Notary, hereby certify to be personally known to me; whose profession and place of residence are also personally known to me; who is, in my judgment, with the necessary capacity to execute the record of facts hereinafter set forth, and who thereupon declares: *First.*—That he is the attorney of Mr. Luis de Oteiza y Cortes, as is proved by the copy of said power of attorney, which he presents, and which reads as follows: "No. 593. In the City of "Havana, on the 21st day of July, of one thousand "eight hundred and eighty-six, before me, Carlos "Amores y Saus, a resident of said city and a Notary "of the same and of its College, appears Mr. Luis de "Oteiza y Cortes, a native of Madrid, thirty-three years 843
"of age, a bachelor, legal counsel for the Exchequer, "and resident of this place, at No. 22 street of la Obra-"pia, who presents his passport of the fourth class, "numbered 3188, issued the 29th day of October last, be-"fore the Justice of the Peace of the Ward of San Felipe, "and who, having given assurance that he is in the "full enjoyment of his civil rights, and that he has the "necessary legal capacity to execute the present power of

844 " attorney, nothing contrary thereto appearing, declares
" that he hereby confers upon Dr. Miguel Gener y Rin-
" con, resident of this city, special power, authorizing
" him to demand and receive from Mr. Robert Reinleing
" the amounts due from him to the declarant, to make
" use of such requisitions as he may think necessary,
" and to execute such receipts or releases as may
" be proper for the amount which said Mr. Rob-
" ert Reinleing may deliver to him. He fur-
" ther executes this power of attorney in favor
" of Dr. Gener and of the Solicitors of the Courts
" of First Instance of this city, Mr. Francisco del Bar-
" rio, Mr. Jose de Zayas Basyen and Mr. Edourdo
" Adot, and in favor also of the Solicitors of the Hon-
845 " orable Court of this Territory, Mr. Luis Plutarco Val-
" des, Mr. Manuel del Barrio, and Mr. Juan Mayorga,
" authorizing them, jointly or separately, and indis-
" criminately, to represent him, judicially, in whatever
" matters may arise. He hereby empowers them to
" make compromises, to appear in oral proceedings and
" meetings, to exercise therein the rights and rights of
" action of the grantor, as they may think best; to de-
" mand the execution of the compromise or of the de-
" cree which may be given, should they accept the same,
" or to demand its nullification, and to appeal from the
" orders which may be made; to represent him before
" any and all authorities, Courts and tribunals in Gov-
846 " ernmental, voluntary, contentious and contentious-ex-
" ecutive proceedings, in all suits, causes and universal
" judgments of whatever kind, and in all matters civil or
" criminal, instituted, or to be instituted by or against
" the declarant, to present petitions, complaints and de-
" mands, as may be necessary and proper in law; to
" present writings, witnesses, documents and other
" proofs; to demand acknowledgments, executions,
" citations, adjournments, attachments, sales of goods,

" arrests, punishments, releases, the execution of judg- 847
" ments, and whatever else may be proper; to impeach,
" denounce, swear, resign, object, protest, petition and
" appeal; to interpose all the resources of complaint,
" force, nullification, abrogation and others, ordinary
" and extraordinary; to continue or renounce the same,
" to prosecute the suits until the final termination and
" execution of the judgments, and to make use there-
" for of all the matters permitted by law. He further
" authorizes them to appoint substitutes for the execu-
" tion of this power hereby approving whatever may be
" done. Thus declares the grantor, the witnesses
" thereof being Mr. Alejandro Villalon and Mr. Juan
" Jose Rodriguez, who make known their legal qualifi- 848
" cations, and who are residents of this city; all of
" said parties being duly apprised of their right to read
" this document for themselves, and having renounced
" the same, I proceeded to read it, from beginning to
" end, receiving the confirmation and ratification of the
" grantor, who signed with the witnesses. And I, the
" Notary, do hereby certify, that said grantor is per-
" sonally known to me, and that I have knowledge of
" his occupation and residence, and of the other matters
" set forth in this document. Luis de Oteiza, Alejan-
" dro Villalon, J. J. Rodriguez del Valle. Sealed.
" Carlos Amores. The above agrees with the original
" instrument, reference to which is hereby made and
" which remains on file with the memoranda of this copy 849
" and of those previously issued in my protocol of the
" year 1886, marked No. 599. I issue the present copy
" to Dr. Miguel Gener upon one sheet of the 7th and
" one of the 12th, at Havana on the 4th day of January,
" 1890. Corrections. Presenting. Between lines. Civil.
" or criminal. correct. witnesses. for. eighty-nine. not
" correct. sealed. Carlos Amores. The above is suf-
" ficient. Dr. Miguel Gener."

850 I, the subscribing Notary, do hereby certify that the preceding is an exact copy of the copy presented, and which, duly rubricated, I have returned to the party interested.

Continuing his declarations, the party appearing declares: *Second.*—That in consequence of his said appointment, and having learned that before the Honorable Court of the Territory a proceeding has been instituted against his client Mr. Oteiza y Cortes, for a supposed malversation of funds in the Office of the Debt of this Island (whereof his said client was Secretary), he presented, together with a copy of the corresponding power of attorney, a petition, copy of which he now presents, in order that the same may be inserted
851 in its proper place and registered. Said petition literally copied reads as follows:—"Honorable Sir: I, Dr. "Miguel Gener, attorney for Mr. Luis Oteiza y Cortes, "as appears by the certified copy of the power of attor- "ney, which in due form I hereto annex, by reason of "the proceeding which has been instituted on account "of defalcations or malversation of public funds sup- "posed to have been committed in the Secretary's "office of the Board of the Debt, as may be most "proper and lawful, do appear before your Excellency "and declare: That by public report and through the "press, I have learned that criminal proceedings have "been instituted, and that my client is included therein
852 "as a probably guilty party. As attorney for said Mr. "Oteiza, such news has surprised me, for the reason "that by royal order of September 2, 1881, it is dis- "tinctly provided that whenever defalcations, malver- "sations, forgeries, etc., shall appear in the office of "the State, before the matter shall pass and be "delivered to the Courts of Justice, and before the "parties supposed to be guilty shall be arrested, an "executive record shall be had for the purpose of

"ascertaining the facts, in which record, of necessity, 853
"shall be heard the parties presumed to be guilty,
"either personally, if they be present, or if absent, then
"by their legally constituted representatives. In
"the present case, the matter has passed into
"the Courts of Justice with evident infraction of
"that sovereign order, for the reason that said
"previous executive record has not been held in the
"presence either of Mr. Oteiza nor in that of his sub-
"scribing attorney. It has not been possible to disre-
"gard said royal order in any case, much less since the
"law of criminal procedure has come in force among
"us. Articles 4, 10 and 14 of said law agree with said
"royal order, and deprive the ordinary tribunals of
"jurisdiction and authority in the matter, at least for the 854
"present, thereby vitiating and nullifying whatever
"may have been done up to the present time. Mr.
"Oteiza, after presenting the resignation of his office,
"left this city on the 28th day of December last past,
"going by way of the United States, to Madrid, in a
"manner lawful and peaceable, in the light of day,
"without hiding from anyone, with the knowledge and
"permission of the authorities, with his passport pre-
"viously countersigned by the Justice of the Peace of
"the ward wherein he resided, the only formality re-
"quired by law; these circumstances, as also his de-
"tention in New York, his making his voyage quietly
"and peacefully, without changing his name, nor em- 855
"ploying any of the means which a criminal would
"have used, these circumstances, whereof we all have
"knowledge through the telegraphic notices, official
"and unofficial, which the press of this capital has made
"public, compel a recognition of the fact that the voy-
"age of said Mr. Oteiza—which he had the most per-
"fect right to undertake after having resigned the pub-
"lic position which he was filling—has nothing of the

856 "appearance of a flight, and gives not the slightest
"foundation for supposing that such was his intention.
"According to the royal order above cited, before the
"Courts of ordinary jurisdiction could proceed crimin-
"ally in the investigation of the acts supposed to be
"criminal, before the arrest of Mr. Oteiza for said acts
"could be ordered and effected, it is indispensable that
"an executive record should be instituted and con-
"cluded, wherein said acts should be investigated in
"the presence of said Mr. Oteiza or of his attorney;
"and until this be done (in the present case it has not
"been done), the ordinary Courts have no jurisdiction
"in the matter, and, therefore, whatever they may do
"therein is void and of no effect. Wherefore, I beg
857 "that your Excellency will recognize me as a party
"in the name and as attorney of Mr. Luis de Oteiza
"y Cortes, by the subscribing solicitor and by virtue of
"the certified copy of the power of attorney which I
"annex; and for the reasons set forth, that you will
"declare void all that has been done by the ordinary
"jurisdiction, that you will declare your Excellency to
"be without jurisdiction in the matter until the prelim-
"inary administrative record shall have been substan-
"tiated with the appearance of Mr. Oteiza, or of his at-
"torney, in accordance with the provisions of the
"royal order of September 2d, 1881, and of Articles 4, 10
"and 14 of the law of criminal procedure; that you will
858 "consequently order that all the proceedings by your Ex-
"cellency taken in this case shall be of non effect, issu-
"ing to that end the proper notices and advices; that
"you will order that when this has been done the pres-
"ent proceedings shall be remitted to his Excellency,
"the Intendent-General of the Treasury, in order that
"the same may be continued as an Administrative
"Record, or for such purposes as your Excellency may
"deem proper; and, lastly, that you will declare *ex*

"*officio* the costs. All of which I ask is in justice. 859
"Havana, January 4th, 1890. Furthermore, the royal
"order of September 2d, 1881, to which I have referred,
"marked No. 1938 of the Department of Foreign Af-
"fairs, and to which his Excellency, the Governor-Gen-
"eral, Mr. Ramon Blanco, who at that time governed
"the offices of this Island, added his 'Let it be com-
"plied with,' recapitulated the various legal disposi-
"tions in force with reference to the matter, and fixed
"the rules of procedure to be observed in causes analo-
"gous to the present one. That royal order is precisely
"the one which is ordered to be observed, and which
"is observed, in our Administrative offices; wherefore,
"the more is it a matter of surprise that it should have 860
"been ignored in the present case. This appears in
"various of the 'Resultings' and 'Considerings,' some
"of which seem to be written expressly for this case.
"On account of their importance, I proceed to cite some
"of the preambles and mandatory parts of said royal
"order:" "Resulting (second), that it does not appear that the Administrative record has been prepared in the form provided for by existing laws and regulations, the action of the offices of the Treasury being limited to reporting to the ordinary Courts, by remitting to them successively, the proceedings and data which they may collect from the Centre of Intervention and the offices of paymasters; and it Resulting (third), that on the 18th day of December, 1879, the Audiencia of the Ter- 861
ritory decreed its own lack of jurisdiction in the matter, in view of the state of the Administrative proceedings, which said matter was returned to the general office of the Treasury to be there continued and legally completed; and it Resulting (sixth), that the Audencia of that territory now appears to be acting again in this matter without any causes or foundations for this variation in the proceedings appearing;" And Consider-

862 ing (fourth), that whereas, the proceedings remitted to the ordinary Courts did not comply with the conditions prescribed by the laws, therefore, the decision of the Audencia, declaring its lack of jurisdiction, is in perfect accordance with law. And considering (fifth), that notwithstanding said decision as to lack of jurisdiction, said tribunal, in May last appear once more acting in the matter without there appearing in the documents remitted by your Excellency any justifying antecedents, nor any explanation of reasons by virtue of which there has been any change in the cause which previously determined the lack of jurisdiction, respecting which extreme the department under my charge re-
863 quires a proper explanation. And considering (ninth), that the mandate in the existing disposition on the subject is the only rule to which administrative offices must strictly subject themselves in the institution, prosecution and determination of the governmental records for defalcation and balance of accounts. And considering (tenth), that in all the records of the said Class in which a "previous administrative question" may exist, this latter must be determined by the competent authorities, before the judicial authorities shall be able to act in the matter. And having examined the Ninth Chapter of the Regulation of the "Carreras Civiles de Ultramar," of June 3d, 1866; the royal decree and regulation of September 12th, 1868, regarding authority
864 for criminally prosecuting public employees; Articles 16, 20 and 21 of the "Ley Organica" of the Court of Accounts of the Kingdom, dated June 3d, 1870; also Articles 94 and 97 of the regulation of said Court; Articles 66, 77 and 78 of the regulation of the Public Treasury of November 8th, 1871; Articles 22 and 60 of the provisional law of administration and accountability of June 25th, 1870; Articles 171, 172 and 185 of the Instructions of October 4th, of said year, relative to the

execution of the decree of Accountability of Ultramar, 865
dated September 12th, preceeding: His Majesty the
King (whom God guard), has ordered the following: 3d.
In the same manner let said direction report the legal
reasons which may have existed for the intervention of
the Courts of Justice in this matter, before it had been
first exhausted by the administration. 4th. In the
prosecution of all records of defalcation which may at
present be in course of preparation, or which may here-
after be prepared, said direction shall observe strictly
and without reservation of any kind the provisions of
existing laws. 6th. Let the said direction proceed
with the greatest activity in the prosecution of the re-
cord which gives rise to the present sovereign order, re- 866
porting monthly to this despartment as to what has been
accomplished, and keeping in view the following rules
based upon existing legislation. 4th. The proper depositions shall be taken of the parties interested who may
be on the island, and such as may be employed shall
continue in their positions as long as this department
shall determine in view of the circumstances, unless by
reason of indications of culpability, well founded,
something else is provided. 5th. To such interested
parties as may be absent, there shall be sent through
this department, or through their attorneys if they have
official ones, the corresponding copies of the charges
which shall clearly set forth the matters thus appearing
against them, in order that the same may be answered 867
with precision and that delays in the proceedings may
be avoided. 6th. When the answers of the parties interested shall have been received, the records shall be
continued as may be proper, and when the same have
been terminated, the Chief Instructor shall give his decision. 7th. Notice of this decision and of the portion
thereof which refers to them shall be given to the parties interested in writing, in order that such as are liable

868 may establish their defense. 8th. When these defenses have been received, the records shall be passed on by the Counsel of the Direction of the Treasury. 9th. Said Centre, in view of the information of said counsel, shall make an order that, in case the same be approved by your Excellency (the Governor-General), notice thereof shall be given to the interested parties who are liable, in order that they may, if they so desire, make the appeal which is granted by law. 10th. The proceedings having reached this point, proceedings shall be continued against those whom it may be proper, to compel repayment, and the culpability which may result shall pass to the ordinary tribunals: "This is
869 "the procedure which should have been observed, "and which has not been observed: Conse- "quently, the prosecution of this cause has been "irregular, and whatever has been done is void. What "should be dome is to return and remit the same to the "office of the Intendant-General of the Treasury, in "order that the Administrative record may be con- "tinued in due form, as in the analogous case referred "to in the royal order cited, your Excellency decided, "as set forth in the 3d 'Resulting' thereof, which I "have copied above. Wherefore, I beg that your Ex- "cellency will take cognizance of the matters set forth "in this paragraph, that you will esteem them as just, "and that you will keep them in mind in deciding the
870 "petition which is contained in the principal part of "this writing. I ask justice, etc. Dr. Miguel Gener, "by his Solicitor, Juan Mayorga. Dated as above."

Third.—That with reference to the said petition, yesterday, the 5th instant, there was entered the decree of which the Secretary of the Court, Mr. Elpidio de Los Santas y Laguerdia, has notified me, and a copy of which says as follows: "Secretary's office of the "Court, in charge of the lawyer Elpidio de Los Santas

" y Laguardia, Decree. Havana, January 5th, 1890. 871
" It resulting, that Dr. Miguel Gener, in the name of
" Mr. Luis de Oteiza y Cortes, has presented a certified
" copy of a power of attorney for litigations without the
" seal of sufficiency, and presents a petition praying
" that he be recognized as a party and as represented in
" this case by the solicitor Juan Mayorga ; praying
" further that all that has been done before the ordinary
" jurisdiction be declared void, and that the Court be
" declared without jurisdiction in the matter so long
" as the administrative record be not first prepared with
" the presence of Oteiza or of his attorney, praying fur-
" ther that in consequence thereof an order be made
" that the measures decreed be without effect and that
" the corresponding notices and communications be 872
" issued, and that it be ordered that this having been
" done, the records herein be remitted to his Excellency
" the Intendent-General of the Treasury, in order that
" the same may be continued as an administrative
" record and for such purposes as his Excellency may
" deem proper, and that the costs be declared *ex officio*,
" and that in another paragraph he makes observations
" with reference to the royal order of September 2d,
" 1881 ; and it Resulting, that having presented the
" matter to the District Attorney, he opposes the same,
" for the reason that the attempt of Dr. Gener to raise a
" prejudical question, is entirely inopportune, and that
" before doing this the Court must decide whether a 873
" party proceeded against criminally, who is beyond
" the jurisdiction of the Spanish Courts, can take any
" steps whatever in a case wherein it is sought to find
" him ; and that the District Attorney being of opinion
" that under such circumstances, a party proceeded
" against criminally cannot be heard, for the reason
" that he can neither legally appear, nor is it a sound
" principle of law that a person criminally prosecuted

874 " be partly in default and partly present, which latter
" reason has equal force with reference to his attorney ;
" and that the District Attorney requests the Court to
" declare that it is not lawful to accede to the before-
" mentioned petition, nor to recognize as a party
" the solicitor Mr. Juan Mayorga on behalf of
" Mr. Miguel Gener and Mr. Luis Oteiza.
" Considering, that neither does the state of the case
" permit the raising of a preliminary question, nor, in
" any case could such a question be raised on behalf of
" a party proceeded against criminally, who is absent and
" for when requisition has been made, until he shall
" have presented himself, or shall be had. Considering
" that the solicitor, Mr. Juan Mayorga, has authorized
875 " with his signature the writing presented in the
" name of Mr. Miguel Gener, by virtue of a certified
" copy of a power of attorney, wherein does not appear
" the corresponding seal of sufficiency, it is hereby
" declared, that there is no reason to pass upon the
" petitions contained in said writing : let notice be
" given to the solicitor, Mr. Juan Mayorga. to present, at
" the first session of the Court and under warning of at-
" tachment, the corresponding seal of sufficiency upon
" the certified copy of the power of attorney which he
" presents. Ordered and signed by the parties at the
" margin. Eugenio Sanchez de Fuentes, Francisco de
" Armas, Antonio A. Ecay, Lawyer Elpidio de los
876 " Santos. In order to deliver the same to the solicitor,
" Mr. Juan Mayorga at the time of giving him notice
" thereof, I issue these presents at Havana January 6th,
" 1890. Elpidio de los Santos."

Fourth.—That inasmuch as said decree works damage to the rights of his client, he has under date, of to-day prepared the corresponding appeal, in order that, corrected and amended, said decree may remain of non effect, and that the petitions contained in the

writing of the 4th instant may be granted; or that in 877
default thereof there may remain a subsidiary appeal to
the "Tribunal Pleno," or to the Supreme Court of Jus-
tice; and he also declares that he wishes said appeal in-
serted in this record, and that for that purpose he pre-
sents it: it reads as follows: "Most Excellent Sir: I,
"Mr. Luis Plutarco Valdés, solicitor for Mr. Luis de
"Oteiza, in the case prosecuted for defalcation or mal-
"versation of public funds said to have been committed
"in the office of the Secretary of the Board of Debt, do
"hereby, according to law, declare: That I have re-
"ceived notice of the decree of yesterday, wherein your
"Excellency has thought proper to declare that there
"is no cause to pass upon the petitions contained in
"my former writing of the fourth instant. I trust that 878
"in view of the following reasons your Excellency will
"correct and amend said decree, rendering the same of
"non effect, and that you will decree according to the
"solicitations contained in my former above mentioned
"writing. Only in a mistaken sense can it be said that
"my client is in default, and only in the same sense
"can he thereby be deprived of the right to present and
"demand his rights by means of an attorney. A state
"of default is not to be presumed: in order to invoke
"it, the same must be declared by a decree, duly
"founded, according to Articles 834 and 839 of the Law
"of Civil Procedure. Such a declaration must always
"be preceded by the issuing of summonses, which, 879
"among other things, shall state that the party sum-
"moned has not been found at his domicile; that his
"whereabouts is unknown; that he must appear within
"a given time; and that if he fail so to appear, he
"shall be declared in default. Articles 835 and 837.
"Said summons must be published in the newspapers
"and must be posted up in public places. Article 838.
"Not until the expiration of the time mentioned in the

880 " notice has expired without the party criminally pro-
" ceeded against having appeared can he be declared to
" be in default. Article 829. Nothing of this has
" been done, neither has it been possible to do it, for
" the reason that the very basis for such a procedure is
" wanting, namely, the ignorance as to the whereabouts
" of Mr. Oteiza. Everyone knows, the Government
" knows officially, and so does your Excellency, that
" Mr. Oteiza, who legally absented himself in the exer-
" cise of his rights, as honest people of all classes may
" do, is at present in New York, detained a prisoner at
" the request of our diligent Consul in that city; by
" reason whereof it is clear that even should he be
881 " properly summoned, he would, by major force, be
" prevented from appearing before your Excellency or
" before the only authority competent in the matter,
" his Excellency the Intendent-General of the Treas-
" ury. Let it not be said that Mr. Oteiza resists be-
" ing brought to this city. It would be difficult to find
" an honest man who in similar circumstances would
" not imitate his example. Mr. Oteiza, who has no ob-
" jection to presenting himself here freely, voluntarily
" and of his own accord, will resist by every legal means
" being brought here as a criminal, to disembark like
" the celebrated assasins and sequestrators Machin, to
" be the subject of popular expectation, to be subject to
" the ridicule and taunts of a mob, who, like a hungry
882 " beast, longs for a victim upon which to satiate its
" voracity. It is, therefore, clear that Mr. Oteiza is not
" in default. Why, therefore, should not my former
" petition be granted? At the present stage of the case,
" why may not preliminary records be admitted? The
" decree of yesterday thus states, but this is again a mis-
" take. The question which I have raised is not merely
" a preliminary one; it is pre-judicial. From a certain
" point of view these may be the same in their results

"when they are not given effect, because the law thus 883
"provides; but these appeals are in their nature dis-
"tinct. In order to raise this prejudicial question, I
"have availed myself of Articles 4, 10 and 14 of the law
"of criminal procedure, which agree perfectly with the
"royal order of September 2d, 1881, and with the
"other legal dispositions therein cited, and which are
"a necessary consequence therefrom. Your Excel-
"lency in the decree of yesterday has not denied the
"existence and force of these dispositions, neither can
"your Excellency deny them, because your Excellency
"cannot deny that which is true. The word 'pre-judi-
"cial, which is used in the first title of Chapter Second
"of the law of criminal procedure, to qualify these 884
"questions, indicates by its very meaning that until
"said questions have been determined, no criminal pro-
"cedure can be instituted by the ordinary Courts. To
"leave these questions for after consideration would be
"a most derisive offering to that Spanish refrain which
"begins with the words 'To a Dead Ass,' and which
"with others of its class contains salutary lessons.
"Article 10 of said law of procedure reads as follows:
"'The ordinary Courts shall have jurisdiction of all
"'criminal causes and judgments, with the exception
"'of the cases reserved by the laws of the Senate to the
"'Tribunals of War and Navy and to the Executive or
"'police authorities.' Article 14 of the same law reads
"as follows: 'Excepting as to the cases reserved to the 885
"'Senate, and as to those which the laws ex-
"'pressly and distinctly assign to the supreme
"'tribunal, to the Territorial Audencias, to the Courts
"'of War and Navy, and to the Executive or
"'police authorities' (the following ordinary tri-
"bunals) 'shall, as a general rule, have juris-
"diction, etc. "Consequently, if the law, if the legal
"dispositions before cited, demand that in cases of defal-

886 "cation or malversation of public funds by officers of
"the administration, there shall be prepared a prelimin-
"ary administrative record, in the presence of the par-
"ties presumed to be liable, before the question of culpa-
"bility shall pass to the ordinary tribunals, it is per-
"fectly clear and indisputable that in the present case,
"in which this pre-requisite has not been observed,
"your Excellency is to-day without jurisdiction
"and competency. This back of jurisdiction and
"competency would exist and your Excellency would
"in any case have to decline to act in the matter, even
"though the representative of Oteiza should not be ad-
"mitted to demand it, and even though no demand
887 "should be made, for the law distinctly provides that
"the ordinary Courts and tribunals shall, *ex officio*, de-
"cline jurisdiction in criminal cases when they are not
"competent and have not jurisdiction therein. It is
"only in civil matters that Judges and Courts cannot,
"*ex officio*, decline jurisdiction, and that a petition
"therefor from a proper party is necessary. In criminal
"matters declination of jurisdiction does not have to
"be demanded by a lawful party, for the reason
"that such a demand is made by the law itself in an
"obligatory and irremediable manner. Such is the
"gravity of the question as to the competency of tri-
"bunals that it has been made the subject of a constitu-
"tional provision, and has been included among the
888 "personal rights of Spanish citizens. In truth, the
"Constitution of 1876 in force among us—that funda-
"mental code wherein the inviolable rights of all
"Spaniards are consecrated; that political compact
"which determines the relations between the rulers and
"the ruled, and which forms the basis and foundation
"of the monarchy of the Spanish nation, whose precepts,
"as essential and fundamental, overrule all judicial
"decisions, all royal orders and decress and all other

"laws—constitution provides, by its 4th Article, 889
"that no Spaniard nor foreigner, shall be detained, ex-
"cepting in the cases and in the form prescribed by
"law that Article 5th provides that 'no Spaniard shall be
"imprisoned, except by 'virtue of the warrant of a
"competent Judge'; 'that every person detained or im-
"prisoned without the legal formalities, or, except
"in the cases prescribed by the constitution and the
"laws, shall be liberated at his own petition or that of
"any Spaniard ; Article 16 provides that 'no Spaniard
"shall be proceeded against crimanally nor be sentenced
"except by a competent Judge or Court, by virtue of
"laws anterior to the crime and in the form prescribed.'
"The evil wishers of Spain delight to declare that in our 890
"nation laws are a dead letter, that the constitution
"and the individual rights which it consecrates are a
"myth, that the citizen has no real and efficacious
"guarantees to shield and to affirm his rights against
"the action of the public power in its various spheres.
"It is, therefore, necesssary that the public power, in
"its various spheres, should, by its acts and resolu-
"tions, give the lie to such wild conceptions in every
"case that may present itself. Patriotism demands
"that in the present case, more than in others, exag-
"gerated scrupulousness be observed, because there in-
"tervenes, or will intervene, in this matter a nation who
"observes us with attention and who takes note of what-
"ever passes among us. Wherefore, I beg that your 891
"Excellency will correct and amend the decree of yes-
"terday, making the same of no effect, and that you
"will provide in conformity with the petitions contained
"in my former writing, these being just. I demand this,
"with costs. Furthermore, in the unlooked for case
"that your Excellency should refuse the petition con-
"tained in the principal part of this writing, I appeal
"from your Excellency, from the decree denying my

892 " petition, and from the similar decree of yesterday, to " the 'Tribunal Pleno', or to the Supreme Court of " Justice, as your Excellency may deem proper And I " beg that your Excellency will in either case grant " me the appeal and will order whatever else may be " proper. I ask this in justice, as before. Havana, " January 6th, 1890. Dr. Miguel Gener, by his Solic- " itor, Juan Mayorga."

Fifth.—That as a result of the matters above set forth, and to the end that in all time, wherever it may be proper, there may remain proof of the introduction of the appeals mentioned in the writing quoted in the preceding paragraph, he requests me, the Notary, to ac-
893 company him with the solicitor, Mr. Juan Mayorga, who substitutes for his confrere. Mr. Luis Plutarco Valdes, for the purpose of certifying to the presentation and delivery of the said writing to the Court of the Most Excellent Audiencia, First Criminal Section, Lawyer Elpidio de los Santos y Laguardia; and to the end that it may be included as a proceeding in this record, and that there may be issued to him such certified and authenticated copies thereof as he may ask, for such purposes as may be desired by his client Mr. Oteiza y Cortez. By virtue of what is above set forth, I, the Notary, have prepared this Record of Proceedings, in order to comply with the solicitations of Dr. Miguel Gener y Rincon, as attorney for Mr. Luis de Oteiza y Cortes. This record
894 having been read by Dr. Gener and by the witnesses, its contents were ratified by the first, who signed the same with those last mentioned, namely, the witnesses who are also personally known to me, and whose qualifications I also know. I certify to all of the above, as also to the fact that the following corrections were made and agreed to by said Dr. Gener and the witnesses after they had examined and approved the same. Corrections: presumptive. there may be. those. no. d. two. patriotism.

between lines. except. by his solicitor. all the above are 895
correct. witnessed. of the. this case. These are not correct: Dr. Miguel Gener, Juan de D'Ojeida, Federica Verdes. Sealed. Alejandro Nunes. There is a seal which says "Alejandro Nunes de Villavicencio, Notary Public. *Nihil Prius Fide.* Havana."

PROCEEDING.—At Havana and immediately after the conclusion of the above, on the same sixth day of January, 1890, at 9 oclock at night, I, the Notary, in order to carry out the solicitations contained in the above Record, and in company with Dr. Miguel Gener y Rincon and the solicitor Mr. Juan Mayorga, presented myself at No. 38 in the street of Gervasio, residence of Mr. Elpidio de los Santos y Laguardia, Secretary of the 896
Court of the First Criminal Section of the Most Excellent Audencia of this Territory, and said gentleman being present, there was delivered to him by the solicitor Mayorga the writing produced by the lawyer Mr. Genor, and which has been inserted in the preceding record, the same being received and being marked with the corresponding presentation, and this being made to appear by the present act, the same is signed by all, as I do certify. Lawyer Elpidio de los Santos. Dr. Miguel Gener and Juan Mayorga. Alejandro Nunes. Rubricated. The above is an exact copy of its original, which under No. 3 as set forth in the heading, appears in my current notary's protocol, reference to which is hereby made. At the request of Dr. Miguel 897
Gener y Rincon, attorney for Mr. Luis de Oteiza y Cortes, I issue this first certified copy on ten sheets of sealed paper, the first of the 10th class and the others of the 12th class, have made a note thereof on the margin of the original, and I stamp, seal and sign the same at Havana on the 7th day of January, 1890. Between lines. those supposed to be criminal. Federico Verdes. Corrected. Amores. present. the. payable. in. prose-

898 cution. ministry. have. at. seventy. all. The above are correct. Witnesses. Mr. of. ra. mente. documents. presumption. pronouncement. ai. seven. each in. the. fault. 1. s. two. the above are not correct. Alejandro Nunes (Rubric.) (Notarial Seal.)

LEGALISLATION.—We, the subscribing Notaries Public of this College and residents of this place do hereby certify that Mr. Alejandro Nunes de Villavicencio y Alvarez, by whom appears authorized the preceding copy of the record of acts and petitions presented to the most excellent Audiencia of the Territory, which appears issued on the 6th instant at the petition of Mr. Miguel Gener y Rincon, as attorney for Mr. Luis
899 de Oteiza y Cortes, is, as he is therein entitled, our confrere; that he uses a seal, signature and rubric like those above set forth, which are to all appearances genuine, and that he is actually practicing his profession, nothing contrary thereto appearing. In testimony whereof, we issue these presents, sealed with the seal of our college, a record thereof having been made at Havana, on the 8th day of January, 1889. Joaquin Lancis. (Rubric). (Notarial Seal). Francisco de Castro. (Notarial Seal). Vised, Senior District Judge, V. Pardo. Official Seal, No. 117. Seal of the College of Notaries, Stamp.

Consulate General of the United States of America, at Havana, Cuba. I, the undersigned, Consul General of
900 the United States of America, at Havana, do hereby certify, that Messrs. Francisco de Castro and Joaquin Lancis, whose signatures and seals appear to the foregoing notarial certificate, to which are also affixed the signature of the Senior District Judge, Don Vicente Pardo, and the seal of the Royal College of Notaries, are duly authorized and commissioned Notaries Public of this city and residents therein. Given under my hand and official seal, at Havana, this eighth day of January, 1890. Ramon O. Williams, Consul General. [SEAL.]

Consulate General of the United States of America, 901
at Havana, Cuba. I, the undersigned, Consul General of the United States of America, at Havana, do further certify that the foregoing documents are properly and legally authenticated as copies of original papers, so as to enable them to be received in the tribunals of Cuba as evidence in defense of a charge of embezzlement, and as evidence in defense of said charge upon a preliminary hearing before a committing magistrate, and as evidence in defense of said charge in an extradition proceeding upon a hearing before a competent magistrate, and especially as evidence in all the cases enumerated where said charge of embezzlement is made against Don Luis de Oteiza y Cortes. In witness whereof, I have here- 902
unto set my hand and affixed the seal of this Consulate General at Havana, this eighteenth day of January, eighteen hundred and ninety. Ramon O. Williams, U. S. Counsul General [SEAL.]

DEFENDANT'S EXHIBIT, N. Feb. 19, 1890. E. H. C. STEN. Seal of the years 1888 and '89. N. O. 074, 790.

I, Mr. Aniceta Suarez Barcena, Chief of the Bureau of the Civil Administration, and filling the position of secretary to the office of Intendent-General of the Treasury of the Island of Cuba, do hereby certify, that 903
in the archives of the Intendent's office there appears a royal order, which literally copied reads, as follows: "Department of Foreign Affairs, No. 1938. Excellent Sir: I have reported to his majesty the King (whom God guard), with respect to the record prepared in this department in consequence of the communication addressed to the same by your excellency under date of July 15th, last, remitting various copies of documents relating to

904 the fraud apparently practiced in various offices of the treasury of that Island, by means of drafts of unlawful origin, which have all the appearance of forgery. Said documents having been examined and it, resulting, that notwithstanding the length of time that has passed since the discovery of the fraud in December of 1878, up to July 15th last past, no report of the fact has been made to this department nor to the Court of Accounts of the kingdom. And it resulting that it does not appear that the administrative record has been prepared in the form provided for by existing laws and regulations, the action of the offices of the treasury having been limited to reporting to the ordinary Courts by remitting to them successively the proceedings and data
905 which they may have collected from the "Centre of Intervention" and the offices of paymasters. And it resulting that on the 18th day of December, 1879, the Audiencia of the Territory decreed its own lack of jurisdiction in the matter, in view of the state of the administrative proceedings, which said matter was returned to the general office of the treasury, to be there continued and legally completed. And it resulting that nothing further has been done since then in the respective records, for the reason that as is stated by the general office of the treasury in its report of the 9th of said July, no efficacious proceeding has been taken or executed for the purpose of obtaining the repayment of the
906 sums paid by illegal documents, nor for the purpose of determining the administrative responsibility of those who should bear the same. And it resulting that as is stated by the said Director of the Treasury, it is not yet possible to fix with exactness the total amount of the sum defrauded; and it resulting that the Audiencia of that territory now appears to be acting again in this matter without any causes or foundations for this veriation in the proceedings appearing; and it resulting

that the said Direction has appointed as Chief Instructor of the record Mr. Jose Marie Azue, ex-Chief of Administration, with authority to appoint the official who shall aid him as secretary. And considering that the offices of the Treasury of that Island have been guilty of a serious omission in not giving due notice of the fact to this Department and to the Court of Accounts of the Kingdom, as also in not reporting periodically upon the steps taken with respect to the administrative record. And considering, that the statement of the Director-General of the Treasury upon reporting to your Excellency on July 15th last, that the illegality of the drafts had not been made sufficiently clear, proves, evidently, that the offices of that branch have not during the long period of time which has passed, taken any useful steps towards administrative ends, neither before nor after the Audiencia declared itself to be without jurisdiction. And considering, that said offices have therefore failed to comply with the directions of existing laws with respect to Governmental proceedings for the preparation of records of defalcations. And considering, that whereas the proceedings remitted to the ordinary courts did not comply with the conditions prescribed by the laws, therefore the decision of the Audiencia declaring its lack of jurisdiction, is in perfect accordance with law. And considering, that notwithstanding said decision as to lack of jurisdiction, said tribunals, in May last appeared once more acting in the matter, without there appearing in the documents remitted by your Excellency any justifying antecedents, nor any explanation of reasons by virtue of which there has been any change in the causes which previously determined the lack of jurisdiction, respecting which extreme the Department under my charge requires a proper explanation. And considering, that the appointment of the office of the Chief Instructor of the administra-

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910 tive record in favor of Mr. Jose Marie de Azua, ex-Chief of Administration, is contrary to what is distinctly commanded in Article 94 of the Regulations of the Court of Accounts of the Kingdom, which said article designates which officials shall take charge of the preparation of said records of defalcations. And considering, that although in the present case the provisions of said Article could not be complied with on account of the liability which may more or less directly affect the officer or officers to whom the preparation of said Governmental record appertains, nevertheless, the active Administration has employees properly qualified who could have supplied the places of those by law designated to make said preparation. And considering, that
911 the fact that the Courts of Justice are engaged in the matter, does not excuse the administration from the obligation under which it is, to prosecute to its termination the administrative record for the declaration of the liability, for the determination of the amount of culpability, and for the prosecution of steps for compelling repayment of the sum defrauded. And considering, that the mandate in the existing Dispositions on the subject is the only rule to which administrative offices must strictly subject themselves in the institution, prosecution and determination of the Governmental records for defalcations and balances of accounts. And considering, that in all the records of the said class, in
912 which a "previous administrative question" may exist, this latter must be determined by the competent authorities before the judicial authorities shall be able to act in the matter. And considering, lastly, that the [Seal of the years 1888 and 1889.] (N. O. 074,791.) Department under my charge should have exact knowledge of the condition of said administrative records, as also, in due course of time, of the judgment which the Administration may render therein. Having examined

the 9th Chapter of the Regulation of the "Carreras Civiles de Ultramar," of June 3rd, 1866; the royal decree and regulation of September 12th, 1868, regarding authority for criminally prosecuting public employees; Articles 16, 20 and 21 of the "Ley Organica," of the Court of Accounts of the Kingdom, dated June 3rd, 1870; also Articles 94 and 97 of the Regulation of said Court; Articles 66, 77 and 78 of the Regulation of the Public Treasury of November 8th, 1871; Articles 22 and 60 of the provisional law of administration and accountability of June 25th, 1870; Articles 171, 172 and 185 of the Instructions of October 4th of said year, relative to the execution of the decree of accountability of Ultramar dated September 12th, preceding; His Majesty the King (whom God guard) has ordered.....the following, without prejudice to the faculties which the authority of your Excellency may use in special cases for decreasing the dispositions which you may think necessary for the purpose of assuring the interests of the Treasury: *First.* The General Direction of the Treasury of that Island is censured through your Excellency for not having given due and detailed reports of the defalcation referred to, to neither this Department nor to the Court of Accounts of the Kingdom, and for not having given subsequently periodical notices of the state of said Govermental proceedings. *Second.* For such purposes as may be proper, said Direction is ordered to report to this Department the causes of the suspension of said record which should have been prepared and prosecuted with all activity by the offices of the proper branch for the purpose of securing the interests of the State. *Third.*—In the same manner let said Direction report the legal reasons which may have existed for the intervention of the Courts of justice in this matter before it had been first exhausted by the Administration. *Fourth.*—In the prosecution of

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916 all records defalcation which may at present be in course of preparation, or which may hereafter be prepared, said Direction shall observe strictly and without reservation of any kind the provisions of existing laws. *Fifth.*—With the least delay possible, let said Direction remit to this Department a general report upon all records of defalcation which may at present be in course of prosecution by them, governmental or judicial, stating the condition of those first mentioned and the condition in which the last mentioned may have been at the time when they were passed to the courts of justice. And let it make known whether with respect to these latter the requirements prescribed by law have been previously complied with. And *Sixth.*—Let the
917 said Direction proceed with the greatest activity in the prosecution of the record which gives rise to the present sovereign order, reporting monthly to this Department as to what has been accomplished, and keeping in view the following rules based upon existing legislation: 1st. Said Direction shall prepare a record for each warrant considered illegal, facilitating in this manner the discovery of the liable parties. 2d. The preparation of the records shall be entrusted to a chief or to an official of the active Administration of the Island; said official may be the sub-Controller of the General Controller's office, the Solicitor of the Treasury. 3d. The Chief "Instructor" shall examine the entries in
918 the books and the other circumstances as to the making of the order and as to the offices paying said warrant, in order to determine if the same was actually issued and if said subordinate offices carried out all the instructions which they had. 4th. The proper depositions shall be taken of the parties interested who may be on the Island, and such as may be employed shall continue in their positions as long as this Department shall determine in view of the circumstances, unless by

reason of indications of culpability, well founded, 919
something else is provided. 5th. To such interested parties as may be absent, there shall be sent through this Department or through their attorneys if they have official ones, the corresponding copies of the charges, which shall clearly set forth the matters thus appearing against them, in order that the same may be answered with precision and that delays in the proceedings may be avoided. 6th. When the answers of the parties interested shall have been received, the records shall be continued as may be proper, and when the same have been terminated the Chief Instructor shall give his decision. 7th. Notice of this decision and of the portion thereof which refers to them, shall be given 920
to the parties interested, in writing, in order that such as are liable may establish their defense. 8th. When these defenses have been received, the records shall be passed on by the counsel of the Direction of the Treasury. 9th. Said Centre, in view of the information of said counsel, shall make an order that, in case the same be approved by your Excellency, notice thereof shall be given to the interested parties, who are liable, in order that they may, if they so desire, make the appeal which is granted by law. And 10th. The proceedings having reached this point, proceedings shall be continued against those whom it may be proper, to compel repayment, and the culpability which may result shall pass the ordinary tribunals. *Finally.*—His 921
Majesty has also resolved that due notice of the present sovereign order be given to the Tribunal of Accounts of the Kingdom. By royal order I communicate this to your Excellency for its corresponding effects. God keep your Excellency for many years. Madrid, September 2d, 1881. Seal. (No. 0,074,792). Leon y Castillo. A rubric. To the Governor-General of the Island of Cuba, Havana, September 29th, 1881. Let the order of

922 His Majesty be complied with. Blanco. Let it be complied with.

I issue these presents at the request of Dr. Miguel Gener and with the consent of his Excellency the Intendent-General the 9th day of the present month, with the visé of His Excellency written on three sheets of sealed paper of the 11th seal of the years 1888 and '89, Nos. 74,790 to 74,792, at Havana on the 10th day of January, 1890. Aniceto S. Barcena. (Rubric).

Seal. Vised Intendent-General, Urzais. (Rubric). Seal 350.

We the undersigned Notaries Public of the College and District of this Capital, do hereby certify that Mr.
923 Aniceto Suarez Barcena, who signs the preceding certificates with the vise of his Excellency Mr. Angel Urzais, with reference to the royal order made by the Department of Foreign Affairs, No. 1938 on September 2nd, 1881, and which is among the archives of the office of the Intendent-General of this Island, are respectively, the first, the Chief of the Bureau of Civil Administration, filling the position of Secretary to the office of the Intendent-General of the Treasury of this Island, and the second, the Intendent-General of the same, both of whom are filling said offices, nothing to the contrary thereto appearing, and that the signatures and rubrics appearing at the end of said document are exactly similar to those which they are accustomed to use. And
924 for the fulfilment thereof, to wit, for its proof, we in our turn issue the present certificate with our seal and signature, adding the seal of our College, at Havana, on the 10th day of January, 1890. Joaquin Lancis. (Rubric.) Alejandro Nunes. (Rubric.) Notarial Seal. Stamp duly cancelled. Seal of the College of Notaries. Consulate-General of the United States of America at Havana, Cuba. I, the undersigned, Consul-General of the United States of America, at Havana, do hereby

certify, that Messrs. Joaquin Lancis and Alejandro 925
Nunes, whose signatures and notarial seals appear to the foregoing and annexed document, to which is also affixed the seal of the College of Notaries—and who certify to the signatures of Don Angel Urzai, Intendent-General of Finance of this Island, and Don Aniceto Suarez Barcena, Secretary of the said Intendency-General, are duly authorized and commissioned Notaries Public of this City and residing therein. Given under my hand and seal of this Consulate-General, the 11th day of January, A.D. 1890. [Seal.] Ramon V. Williams. (Rubric.) Consul-General.

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DEFENDANT'S EXHIBIT P, FEBRUARY 19, 1890, E. H. C. STEN.

[SEAL.] N. O. 016,105.

I, Mr. Aniceta Suarez Barcena, Chief of the Bureau of Second Class of the Civil Administration, discharging the functions of Secretary of the Indendent-General of the Treasury of this Island, do hereby certify: That in the personal record of Mr. Luis Oteiza y Cortes in the corresponding Bureau of the office of Secretary of the Intendent-General of the Treasury, there appears a document, which copied literally reads as follows: "To his Excellency the Intendent-General of the Treasury. Most Excellent Sir: I, Mr. Luis de Oteiza, 927
Chief of Administration of the Fourth Class, Accounting Secretary of the Debt, do hereby, in the most respectful manner, declare to your Excellency that the visit ordered by your Excellency to the office under my charge, and the unfavorable judgment which your Excellency has formed with respect to the report in the order for the payment of coupons of bonds issued before September, 1886, proves that your Excellency does not

928 judge my action satisfactory, nor have I succeeded in interpreting the decree of your Excellency. May your Excellency be pleased to attribute to my small intelligence alone, that although the desire to please and serve you was great, and although I should have wished to divine the criterion of your Excellency in succeeding matters, nevertheless, in view of the proceedings before your entrance into office, this is now impossible. The situation created by the resolution of your Excellency, which I respect and venerate, compels a resignation of the office when it affects a chief of my antecedents, who has served so many intendents and has succeeded in interpreting, as legal adviser,
929 orders more complicated than those contained in the royal order of the order cited. Wherefore, I beg your Excellency will be pleased to accept at once the resignation which I present, there being no necessity to make a formal delivery of the office, for the reason that there has been no alteration of record or balance of accounts since I took possession. It is grace which I expect from your Excellency, to whom I address this message of my greatest respect.

Havana, December 27th, 1889. Luis de Oteiza (Rubric). No. 13,982. Folio 368. A seal of blue ink, which says: Office of the Controller-General of the Treasury, December 30th, 89, entered December 30. 'Let it be personally registered. By order of S Bar-
930 cena.'" At the request of Dr. Miguel Gener, and by consent of his Excellency the Intendent-General, given on the 15th of the present month, I issue these presents, vised by his Excellency, at Havana, on the 18th day of January, 1890. Aniceto S. Barcena (Rubric). Vised. The Intendent-General. Urzais (Rubric). (Official seal). (Official seal, 541, p. 10).

We, the subscribing Notaries of the College of the Territory of the Audencia of Havana, residents of this

city, do hereby certify that Mr. Aniceto Suarez Bar- 931
cena, by whom the above certificate appears signed, is Secretary, actually filling said position in the office of the Intendent-General of this island, and that Mr. Angel Urzais, by whom the above certificate appears viséd, is Intendent-General of this island, also actually filling said office. That both use signatures like those which respectively authorize said certificate and visé, which latter by their resemblance to those which they are accustomed to use we hold to be authentic, nothing contrary thereto appearing. And for its legal effects, and in order that the authenticity of said certificate and visé may be duly accredited wherever it may be proper, we issue the present, sealed with the seal of our College, proper records thereof having been made in the 932
respective registries. Havana, January 18th, 1890. Notarial Seal. Carlos Amores (Rubric). José Antonio Portocarrero, Senior District Judge. V. Pardo. Notarial Seal. No. 126. Viséd. Stamp duly cancelled. Seal of the College of Notaries.

Consulate General of the United States of America, at Havana, Island of Cuba. I, the undersigned, Consul General of the United States of America at Havana, Island of Cuba, do hereby certify that the signatures to the annexed notarial documents—to which are affixed the seal of the College of Notaries, and signatures of Don V. Pardo, Senior District Judge—are the true and genuine signatures and notarial seals of Messrs. 933
Carlos Amores, and José Antonio Portocarrero, who certify to the signatures to the preceding certificate of Don Aniceto S. Barcena, Secretary of the Intendency General of Finance, and the countersignature of Don Angel Urzais, the Intendent-General of Finance of this island, together with the seal of said Intendency General; that said Notaries are duly authorized and commissioned Notaries Public of this city, and that to

934 all their official acts full faith and credit are due and given as well in court as thereout. And I do further certify that the foregoing document is properly and legally authenticated, so as to entitle it to be received in the tribunals of Cuba, as evidence in defense of a charge of embezzlement, and as evidence of said charge upon a preliminary hearing before a committing magistrate, and as evidence in defense of said charge in an extradition proceeding upon a hearing before a competent magistrate, and especially as evidence in all the cases enumerated where said charge of embezzlement is made against Don Luis de Oteiza y Cortes. In witness whereof, I have hereunto set my hand and affixed the
935 seal of this Consulate General at Havana, the twentieth day of January, eighteen hundred and ninety. Ramon O. Williams, U. S. Consul General. [Seal.]

DEFENDANT'S EXHIBIT R. February 19, 1890. E. H. C. STEN. N. O. 074, 794.

[SEAL.]

I, Mr. Jose de Marcos Llera, Chief of the Bureau of the Third Class, of the secretary's auditing Office of the Board of Debt, of this Island, and, by reglementary substitution, in charge of said Secretary's Auditing Office, the incumbency of Mr. Luis de Oteiza y Cortes
936 having terminated, do in view of antecedents, hereby certify that although it is true that Mr. Luis Oteiza, as Accounting Secretary of the Board of Debt, did not have under his personal custody nor on deposit, either public funds or effects of value, nevertheless he did have charge in a wooden and iron box which stands in the secretary's office, of various books of bonds of the sinking fund and annuity debt. It appears by reference to the proceedings annexed to the proceedings for the

issue of bonds, pages 87 and 89, that the Department of 937
Foreign Affairs, on the 4th day of November, 1887, authorized the cancellation of the bonds and coupons of said stub books, and the numbers of said bonds appear in a communication addressed to said department, where in it is stated that the same had been actually cancelled and that they are preserved in the said box. Up to the present time the undersigned has not taken charge of said box, for the reason that the same must appear as forming part of the inventory which is being taken. This certificate, answering as it does the 6th and 7th points contained in the petition presented to his Excellency the Intendent-General of the treasury, by Mr. Miguel Gener, attorney for Mr. Luis Oteiza, I issue these presents by order of his superior authority, at 938
Havana, on the 18th day of January, 1890. Jose de M. Llera, (Rubric). Vised, The Intendent-General, Urzais, 542 P. 10 Official seal. Seal of the Board of Debt. Seal of the Intendent-General.

We, the undersigned, Notaries of the College of the Territory of the Audiencia of Havana, and residents of said city, do hereby certify, that Mr. Jose de Marcos Llera by whom the above certificate is issued is at present filling the office of Accounting Secretary of the Board of Debt, and that Mr. Angel Urzais, by whom said certificate appears vised, is Intendent-General of this Island, actually filling said office, that both use signatures similar to those which respectively authorize the 939
said certificate and vise, which said signatures by their resemblance to those which they are accustomed to use, we hold to be authentic, nothing contrary thereto appearing. And for its legal effects we issue the present certificate, sealed by the seal of our college, the appropriate registry thereof having been made in our books of record. Havana, January 18th, 1890. Joaquin Lancis. (Rubric.) Notarial Seal. Notarial seal. Jose

940 Antonio Portocarrero. No. 128, Vised by the Senior Dictrict Judge, Pardo. Stamp duly cancelled. Seal of the College of Notaries.

Consulate-General of the United States of America at Havana, Island of Cuba. I, the undersigned, Consul General of the United States of America, at Havana, Island of Cuba, do hereby certify that the signatures to the annexed Notarial document—to which are affixed the seal of the College of Notaries, and signature of Don V. Pardo, Senior District Judge, are the true and genuine signatures and notarial seals of Messrs. Joaquin Lancis and Jose Antonio Portocarrero, who certify to the signature to the preceding certificate, of Don Jose de Marcos Llera, the Secretary Auditor (Secretario Con-
941 tador) of the Junta de la Denda, and the counter signature of Don Angel Urzais, the Intendent General of Finance of this Island, together with the seals of said Junta and Intendency General, that said notaries are duly authorized and commissioned Notaries Public of this city and that to all their official acts full faith and credit are due and given as well in Court as thereout. And I do further certify that the foregoing document is properly and legally authenticated, so as to entitle it to be received in the tribunals of Cuba, as evidence in defense of a charge of embezzlement, and as evidence of said charge upon a preliminary hearing before a committing magistrate and as evidence In defense of said
942 charge in an extradition proceeding upon a hearing before a competent magistrate, and especially as evidence in all the cases enumerated where said charge of embezzlement is made against Don Luis de Oteiza y Cortes. In witness whereof I have hereunto set my hand and affixed the seal of this Consulate General at Havana, this twentieth day of January, eighteen hundred and ninety. Ramon O. Williams, U. S. Consul General. [SEAL.]

Defendant's Exhibit S, Feb'y 24, 1890.

943

In the matter of the application for extradition of Luis de Oteiza y Cortez, before United States Commissioner Samuel H. Lyman.

In accordance with the rights secured to a defendant in a preliminary examination before a committing magistrate; by Section 196 of the Code of Criminal Procedure of the State of New York, the defendant, Luis de Oteiza y Cortes, hereby makes, in answer to the charges preferred against him, in explanation of the facts alleged, the following

Statement.

944

The Government of Cuba is a military despotism. The military element always predominates over the civil, and the Captain-General illegally imposes his will upon all the authorities and civil functionaries, without recognizing the rights of even the Intendent of Finance, of the President of the Court or of other officials, whose decisions the law makes final. I have for many years acted as Counsel to the office of the Intendent-General of Finance of Cuba, and have always advised the Intendents to resist the usurpation of authority on the part of the Captain-General. To sustain this point, I have even advised the resignation of two Intendents. Since the year 1882, I have prepared all the estimates for the Island of Cuba, and have therein opposed the 945
the excessive expenditures of the War Department, whose strength the military element of the Island has always desired to increase. I have in fact reduced the expenses of the army during a period of eight years from $12,000,000 to $6,000,000, and have thereby brought upon myself the enmity of the Captain-General and of many other officials. In the year 1887 I was ordered to

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941 tador) of the Junta de la Denda, and the counter signature of Don Angel Urzais, the Intendent General of Finance of this Island, together with the seals of said Junta and Intendency General, that said notaries are duly authorized and commissioned Notaries Public of this city and that to all their official acts full faith and credit are due and given as well in Court as thereout. And I do further certify that the foregoing document is properly and legally authenticated, so as to entitle it to be received in the tribunals of Cuba, as evidence in defense of a charge of embezzlement, and as evidence of said charge upon a preliminary hearing before a committing magistrate and as evidence In defense of said
942 charge in an extradition proceeding upon a hearing before a competent magistrate, and especially as evidence in all the cases enumerated where said charge of embezzlement is made against Don Luis de Oteiza y Cortes. In witness whereof I have hereunto set my hand and affixed the seal of this Consulate General at Havana, this twentieth day of January, eighteen hundred and ninety. Ramon O. Williams, U. S. Consul General. [SEAL.]

DEFENDANT'S EXHIBIT S, FEB'Y 24, 1890. 943

In the matter of the application for extradition of Luis de Oteiza y Cortez, before United States Commissioner Samuel H. Lyman.

In accordance with the rights secured to a defendant in a preliminary examination before a committing magistrate; by Section 196 of the Code of Criminal Procedure of the State of New York, the defendant, Luis de Oteiza y Cortes, hereby makes, in answer to the charges preferred against him, in explanation of the facts alleged, the following

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946 investigate certain frauds discovered in the Board of Debt, perpetrated by means of false drafts of the military administration ; in this way it became my duty to declare the responsibility of several superior military offices in the matter. The Captain-General at that time was strenuously opposed to having any charges preferred against the military administration, believing that this would prejudice the prestige of the army. In consequence, he discharged me from my office. I had a long conference with the General regarding the matter, and no arrangrment was reached. This interview took place on the 27th day of April, 1888, at 4 o'clock in the afternoon, and believing that it was to my interest to reach Madrid as speedily as possible, I
947 embarked on the following day, in the morning, by the steamer "Olivette," taking the route via New York in precisely the same manner as I had proposed doing last January. At that time I was detained in New York only one day. I arrived at Madrid in due time and was by order of the Ministry re-instated in my position in Cuba. At that time General Salamanca was a member of the Senate of Spain and took upon himself to defend the military administration of Cuba and to defend it against the charges which were made by me. Shortly after this General Salamanca was appointed Captain-General of Cuba, and upon his arrival at Havana found me filling the position of Secretary of the General Gov-
948 ernment. The estimates were at that moment being prepared, and General Salamanca knowing my opposition to the military establishment of the Island, vented against me all his personal antipathy. General Salmanaca inaugurated his Government in Cuba by demonstrating himself to be a military man and a tyrant. He never wore any other dress than his military uniform, and was in the habit of stating that he had no need of knowing the civil laws, because he proposed to govern

according to his own ideas. I naturally criticised this 949
conduct, and these criticisms reached the ears of the General, thereby increasing greatly his animosity towards me. Among other matters worthy of mention, as showing the feeling against me on the part of the General, is his conduct with respect to a claim which I have been prosecuting against the Government. This claim had reference to the recovery of four hundred bonds of the Debt, and was decided in my favor by the Intendent. As soon, however, as this decision came to the ears of the General, he reversed the decision of the Intendent, and wrote to the Ministry in Spain, advising my removal, because being a public official, I had instituted suit against the Government. From this I ap- 950
pealed to the Ministry at Madrid, who were well acquainted with the justice of my claim, and who not only did not act upon the advice of General Salamanca, but passed the claim to the Council of State. This continued to increase the enmity of the General against me, and when in December last a new Intendent arrived from Spain, the General at once used his influence to prejudice him against me and to raise suspicions in his mind against my integrity. The new Intendent went into office greatly prejudiced against me, and at once a question arose which involved the interpretation of a certain royal order regulating the formalities to be observed with reference to the payment of coupons. Until December 5th, 1889, when the new Indendent arrived, 951
I had conducted the affairs of my office in accordance with what I considered to be the proper interpretation of the Royal Order referred to. This formed a pretext for the ordering of an investigation, and without any explanation to me, a visit was ordered to be made to my office. I naturally resented such a proceeding, and determined to proceed at once to Madrid, as I had done on a former occasion, in order to present a true state-

952 ment of the case to the Ministry, before the prejudiced reports of my enemies should arrive. With this end in in view, I prepared and sent my resignation, and on the following day I left on the steamer "Olivette," intending to take the same route which I had taken in 1887. When I left, no accusations had been made against me and if since then frauds have been discovered in the office of which I was Chief, these can be easily explained without in any way involving me in the matter. Among the many facts which have been alleged against me, the two which on their face appear as requiring explanation are the receipts for coupons found among my papers and the fact that during the months of November and December of last year I remitted large sums of money to Spain.

953 In order to explain the receipts, it will be well to say a few words with reference to a custom of the office of the Controller of the Debt. When coupons are presented for payment, they must be accompanied by a list officially prepared and contained in a printed form, a copy and translation of which I hereto annex. Many holders of coupons are uninstructed as to the manner in which these lists should be prepared, and frequently they secure the assistance of some clerk in the Secretary's office, to whom they pay a small compensation for preparing the lists. The Exchange being next door to the Secretary's office, this is often done by brokers themselves, when they have purchased a large number of

954 coupons. One day a clerk, named Maig, who has since fled and whose whereabouts appears to be unknown, stated to me that a broker had requested him to prepare a number of invoices for coupons, and that he wished to receive my permission to accept the work. Inasmuch as there were a great many coupons, it was expected that the work would consume the spare hours of said Maig for a number of days, and consequently, the broker left the coupons at the office, the clerk

depositing them in the office safe and giving to the broker a receipt therefor. When the lists were completed, a few days later, the coupons were delivered to the broker Andrade and the same were returned in three lots. It appeared, however, that the receipt given to Andrade, had been lost, and in consequence thereof Andrade gave three separate receipts for the coupons returned to him, in order that the same might serve as vouchers to the office. These receipts were among my papers and happened to be among those which I placed in my bag at the time of leaving. Andrade has been a friend of mine for years, and has acted as broker for me in a number of large matters. He has purchased in the exchange large quantities of bonds for me and has secured drafts on the same. He was well aware that since the bankruptcy of the house of Ahorras, it had not been my habit to keep funds in bank and that I kept my money in bank notes in my own possession. It can eaisily be understood how Andrade, in collusion with the clerk Maig, made use of this combination of receipts in order to subsequently be able to state that the coupons were mine. This, however, is false, and inasmuch as the clerk Maig had access to the safe where the cancelled stub-books of bonds and coupons were kept, and where also the coupons received from Andrade were deposited for safe keeping, it must be he who took the stub-book and who, in collusion with Andrade, used it to perpetrate the fraud which has been discovered. This undoubtedly is the reason why Andrade in the receipts given, did not specify the numbers of the coupons, for had he done so, I should have at once seen that they were of bonds which had been cancelled and which were not in circulation. When the clerk presented the lists to me for my signature, the numbers mentioned were 6,001 to 6,500, these corresponding to

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958 an issue prior to September, 1886, and each one of these invoices was accompanied by a proceeding wherein it appeared that the same had been examined by the Bureau of Coupons, and that the origin of the coupons had been proven by the declarations of Andrade in accordance with the third clause of the Royal Order of January 2nd, 1888. For this reason, I signed the same without suspicion. After the lists had received my signature and that of the intendent, they were undoubtedly, changed by the addition of the figure "1," so as to make them read 16,001 to 16,500, instead of 6,001 to 6,500. All the criminal responsibility in this matter, therefore, rests with the clerk of the Bureau
959 and with the broker Andrade. Andrade is to-day trying to save himself by throwing the blame upon me. He has seen that his assistants Valdes and Remus have been liberated simply by virtue of a declaration to the effect that the bonds were delivered to them by Andrade, and Andrade is now attempting to do the same thing by stating that he received them from me. Possibly I may be found to be responsible in a civil action for the malfeasance of a clerk of my office, but this question must be determined in administrative proceedings, which by the laws of Spain are required to precede any criminal prosecution. As to the drafts sent by me to Madrid, I would state, that I have always had a large capital of my own, which I have
960 used in operations at the exchanges at Barcelona and Paris, and in commission matters from Paris. At Havana I have always speculated in the exchange, and have frequently employed the broker Andrade to make large purchases for me. I have now pending against the government a suit for the recovery of four hundred bonds of the debt, stolen from me in 1885, and valued at $50,000 in gold. I mention this as an indication of my financial standing. Upon leaving Havana, I drew a

draft on Madrid for $77,000, which was money re- 961
sulting from operations and speculations, which have nothing whatever to do with the frauds discovered in the Secretary-Controller's office. I do not mean to cite these facts as proofs that no fraud has been committed, but that if such has been the case, I am in no way criminally responsible therefor. To show how utterly visionary this whole charge is, and how it can be made to change at the will of the prosecuting Government, I respectfully call attention to the fact that it was first stated that I had taken $690,000 worth of bonds and coupons and that they were to be found among my baggage. Subsequently, this $690,000 was reduced to $190,000, and still later the amount seems to have been
reduced to $100,000 or less. When more light is turned 962
upon the matter it will be found that this $100,000 will in the same manner melt away, and that I shall be found free from any criminal liability in the matter.

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964 DEFENDANT'S EXHIBIT T, FEBRUARY 24, 1890.

Public debt of the Island of Cuba. Redeemable at 1% with 3% of tax. Coupons due the 1st of 18 . Invoice No. . Statement of coupons of said debt, which with invoice numbered as above are to-day presented, in order that the same may be paid by the Spanish Bank of the Island of Cuba.

Coupons.	Number of the bonds to which said Coupons correspond.	Series.	Value of Coupons.	Total. $ c.

965

Total,

Havana, day of 18 .

(Signature of holder,)

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Controller's office of the Public Debt of the Island of Cuba. Number . The coupons specified herein which amount to a total of have been presented on the date of this invoice, have been cancelled by the office of the Secretary-Controller, in the presence of the holder, and will be paid by the Spanish Bank of the Island of Cuba by virtue of the order placed upon this invoice, upon presentation thereof to the cashier of

said bank, together with the said coupons, wheron there shall be stamped *Paid* on the backs thereof, without which requisite they shall not be charged to the accounts of said bank. Havana the day of , 18 . The Secretary-Controller Chief of the Bureau . Let payment be made to bearer, upon presentation of this invoice and of the coupons therein specified. Received . The Intendent-General of Finance. Signature of holder. 967

Spanish Bank of the Island of Cuba. Section of the Public Debt. Number . Payment of Coupons . Four months from 18 to the coupons above specified, amounting in all to , have this day been paid, and remain deposited in the safe of this bank. Vised. Havana, day of 18 . The Governor, Noted, The Controller. 968

Final Commitment. 969

In the matter of the Application of the Consul-General of Spain, at the City of New York, for the extradition of LUIS OTEIZA Y CORTES, charged with embezzlement or criminal malversation of public funds, committed within the jurisdiction of the Kingdom of Spain, viz., Havana, Island of Cuba, under the treaty between the United States of America and Spain.

970 To any Marshal of the United States and to his deputies, or either of them: Whereas, a warrant for the apprehension of Luis Oteiza y Cortes, under the treaty between the Unitied States and Spain, was issued on the second day of January, 1890, charging him with embezzlement or criminal malversation of public funds; and whereas the said Oteiza was afterwards arrested thereon and brought before me, and his counsel demanded an examination, which was granted by the Commissioner, and the hearings thereon having been full and fair, and the Commissioner deeming the evidence sufficient to sustain the charge under the provisions of the said treaty, and in order that the evidence and proceedings
971 may be certified to the Secretary of State—I hereby commit the accused to the custody of the United States Marshal, to be by him held in the proper jail until a warrant for the surrender of the said Luis Oteiza y Cortes shall issue, according the stipulations of the treaty, or he shall be otherwise dealt with according to law. In witness whereof, I have hereunto subscribed my name and affixed my seal, this 13th day of March, 1890.

SAM'L. H. LYMAN, U. S. Commissioner, duly authorized to act under Section 5270 of the United States Revised Statutes.

In the matter of the application of the Consul General
972 of Spain at the City of New York, for the extradition of Luis de Oteyza y Cortez, charged with embezzlement, or criminal malversation of public funds, committed within the jurisdition of the Kingdom of Spain, viz., Havana, Island of Cuba, under treaty between the United States of America and Spain. In obedience to the within writ of certiorari, I hereby certify that the accompanying papers constitute a complete record of all the proceedings had before me in the above matter, including the

evidence and exhibits thereto referred to, with the exception of the warrant of arrest, temporary commitments, and final commitment, which are in the possession of the United States Marshal of this District. N. Y., March 27, 1890. 973

SAMUEL H. LYMAN, U. S. Commissioner duly appointed to execute Chapter 66 of the U. S. Revised Statutes relating to extradition.

Habeas Corpus Proceedings.

To the Honorable E. Henry Lacombe, a Justice of the Circuit Court of the United States, for the Southern District of New York, or any other Justice of said Court: 974

The petition of Luis Oteiza y Cortez, respectfully shows unto your Honor, that he is deprived of his liberty by John W. Jacobus, Esq., Marshal of the United States, for the Southern District of New York, and Dennis F. Cray, Warden of the jail of the City and County of New York, and that he is thus held in custody by the said Marshal and Warden, by color of authority of the United States, contrary to the Constitution and Laws of the United States. The facts of the detention of your petitioner are, that on the 2d day of January, 1890, Miguel Suarez Guanes as Consul General of Spain presented to Samuel H. Lyman, Esq., a Commissioner of the Circuit Court, for the Southern District of New York, a certain complaint in behalf of the Kindom of Spain, charging your petitioner, among other things, with the crime of embezzlement of public funds, at the city of Havana, in the Island of Cuba, on or about the 28th, day of December, 1889, and praying for a warrant to arrest your petitioner, and that after a hear- 975

976 ing, it should be certified to the proper executive authority for extradition, under the provisions of a treaty with Spain, dated the 7th day of January, 1877, and of a supplementary treaty thereto, dated the 7th day of August, 1882.

Thereafter your petitioner was arrested under a warrant issued, as prayed in said petition, and such proceedings were thereafter had, that on the 13th day of March, 1890, said Lyman decided that said charge was sustained, and committed your petitioner to the custody of said marshal and warden for extradition, pursuant to the prayer of said petition, and said Marshal and warden hold your petitioner accordingly and not otherwise.

977 Your petitioner avers and charges that there was not before said Commissioner, or upon any hearing upon said charges, adduced or presented any evidence, lawful and competent, to sustain the charge of embezzlement of public funds, or of any other crime covered by said treaty, and that said decision of said Lyman was without evidence to support it, and null, void and of no effect, and that said commitment, under which your petitioner was held, is of no force or validity. Wherefore, your petitioner prays that your Honor do forthwith issue a writ of *habeas corpus* to the said John W. Jacobus and Dennis F. Gray, Marshal and Warden as aforesaid, requiring them to produce the body of your petitioner before your Honor, at some time to be designated in said

978 writ, there to abide what shall be awarded by your Honor in the premises. And at the same time your petitioner prays your Honor to issue a writ of certiorari to said Samuel H. Lyman, Esq., ordering and requiring said Lyman forthwith to certify to your Honor true copies of the proceedings, complaints, warrants, depositions, trials, examinations determinations, commitments and records of said Lyman, or before him as such Commissioner in the premises, and under and by virtue

of which your petitioner is now deprived of his liberty by authority of said Lyman as such Commissioner. And your petitioner will ever pray, &c. 979

LUIS OTEYZA Y CORTES.

S. MALLET-PREVOST, Attorney for Petitioner, No. 35 Broadway, New York City.

County of New York, Southern District of New York, ss.: Before me personally appeared Luis Oteiza y Cortes this 14th day of March, 1890, the petitioner named in the foregoing petition, and being by me first sworn in the form prescribed by law, made oath and said that he had read the said petition, and that the matters and facts contained therein are true to the best of his knowledge, information and belief. 980

The President of the United States to Samuel H. Lyman, Esq., a Commissioner of the Circuit Court of the United States for the Southern District of New York, GREETING:

We command you that you certify fully and at large to the Circuit Court of the United States for the Southern District of New York, at the Court room thereof in the city of New York, on the 28th day of March, 1890, at 11 o'clock A. M., the day and cause of the imprisonment of Luis Oteiza y Cortez, and true copies of the proceedings and complaints, warrants, depositions, trials, examinations, determinations, commitments and record before you therein, and that you have then and there this writ. Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court, the 14th day March, 1890. 981

[SEAL] JOHN A. SHIELDS, Clerk.

S. MALLET-PROVOST, Attorney for Petitioner, No. 35 Broadway, New York City.

Endorsed.—The within writ is allowed this 14th March, 1890, E. HENRY LACOMBE.

982 The President of the United States to John W. Jacobus, Marshal of the United States for the Southern District of New York, and Dennis F. Gray, Warden of the jail of New York City and County, GREETING:

We command you that you have the body of Luis Oteiza y Cortez, by you imprisoned and detained as it is said, together with the time and cause of such imprisonment and detention, at the Court room of the Circuit Court for the Southern District of New York, in the city of New York, on the 28th day of March, 1890, at 11 o'clock in the forenoon, to do and receive what shall then and there be considered concerning him, and have you then and there this writ. Witness the Honorable Mel-
983 ville W. Fuller, Chief Justice of the Supreme Court, the 14th day of March, 1890.

[SEAL] JOHN A. SHIELDS, Clerk.

S. MALLET-PREVOST, Attorney for Petitioner, No. 35 Broadway, New York City.

Endorsed.—The within writ is allowed this 14th March, 1890, E. HENRY LACOMBE.

Decision of Judge Lacombe.

CIRCUIT COURT OF THE UNITED STATES,

984 SOUTHERN DISTRICT OF NEW YORK.

In the matter of the application for extradition of LUIS DE OTEYZA Y CORTEZ.

For the Spanish Government, Messrs. OLCOTT, MESTRE & GONZALEZ. For the Relator S. MALLET-PREVOST.

LACOMBE, Circuit Judge.—If, when abstracted by the prisoner, the coupons were not perforated but were in

such condition that *bona fide* holders for value could 985
recover on them they were undoubtedly public funds. If they were canceled or imperfect when he took them, his subsequent action in preparing and certifying the invoices in which they were inclosed, and in auditing the same as a claim against the Spanish Government, caused the Intendant to endorse the same and the Spanish Bank to pay. The affixing of the prisoner's signature to his certificate or audit was an act done by virtue of his office, deriving its sole force from the confidence placed in it by other officials as the act of a public officer in the line of his official duty. By discharging therefore falsely and with corrupt intent the functions of his office he got possession of certain 986
moneys paid out by the Spanish Bank, which would not have passed from the bank's possession to his own, except as a consequence of his official action. Of these moneys therefore he obtained charge by virtue of his office, and thereupon converted them to his own use. That the moneys thus paid out by the Spanish Bank were public funds admits of no doubt. They were either moneys standing to the credit of the Spanish Government by reason of the circumstance that that Government had theretofore deposited cash or its equivalent with the bank, or if under some contract (referred to upon the argument *but not in proof*) were advanced by the Spanish Bank from time to time upon drafts of the Government which at the time such drafts were pre- 987
sented had no moneys standing to its credit in the bank, then at the moment when the bank advanced the money to cash the drafts the money so advanced became cash, the proeeeds of a loan made by the bank to the Government, and therefore public funds. Defendant's acts, therefore, seem to be within the terms of Article 401 of the Spanish Penal Code of Cuba, which reads (according to the translation submitted by the prisoner's coun-

988 sel) as follows: "Article 401. A public employee who "having charge by virtue of his office of public funds "or effects takes or allows others to take the same shall "be punished, &c." Acts such as his are also made criminal by express Statutes of the United States and of the State of New York (U. S. Revised Statutes, Section 5438, N. Y. Penal Code, Sec. 165). It is true that the complaint does not refer to the moneys thus obtained from the bank but under the peculiar language of the 11th and 12th Articles of the treaty this Court will look into the warrant of arrest issued in the country from which the prisoner has fled for a specific statement of the offence which it is claimed that he has committed; and the prisoner can certainly not object that he is not
989 sufficiently informed of the offence with which he is charged when he is appraised of the contents of that document. The prisoner may be produced on Friday morning for further disposition.

E. Henry Lacombe.

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held in the Post Office building in the City of New York, on the 18th day of April, 1890.

Present—Hon. E. Henry Lacombe, Circuit Judge.

990 In the matter or the petition of Luis Oteiza y Cortes for a writ of habeas corpus.

A petition for the writs of habeas corpus and certiorari having been duly filed herein, and the writs aforesaid duly issued, and returns thereto being duly made to this Court, and the body of the petitioner being before the Court in pursuance of the writ; now, upon said records and returns, and upon all the proceedings thereby appearing, and after hearing S. Mallet-Prevost, Esq., in

support of the petition, and Emmet R. Olcott, Esq., for the Consul General of the Kingdom of Spain, the Complainant, opposed. Ordered, that the writ of habeas corpus be and the same is hereby discharged. And further ordered, on the motion of relator's counsel, that the petitioner remain in the custody of the Marshal of the United States for the Southern District of New York pending such application on appeal as petitioner may be advised to make to a Justice of the Supreme Court of the United States, pursuant to the 34th rule of that Court; or, until the further order of this Court, upon notice by said complainant, after twenty days from the date of this order. 991

E. Henry Lacombe. 992

Proceedings on Appeal.

In the Circuit Court of the United States for the Southern District of New York.

In the Matter of the Petition of Luis de Oteyza y Cortez, for a writ of habeas corpus.

The petitioner above named, conceiving himself aggrieved by the final decision and order entered on the 18th day of April, 1890, in the matter above entitled, doth hereby appeal therefrom to the Supreme Court of the United States, and he prays that a transcript of the record, proceedings and evidence in said matter, duly authenticated, may be sent to said Supreme Court. 993

S. Mallet Prevost, Attorney for Petitioner, No. 35 Broadway, New York City.

The foregoing Appeal is hereby allowed, and it is ordered that a transcript of the petition, writ of habeas corpus, return thereto, and other proceedings, be sent

994 by the Clerk of said Circuit Court to said Supreme Court of the United States at the city of Washington, in the District of Columbia, April 29, 1890.

SAMUEL BLATCHFORD, Associate Justice of the Supreme Court of the United States.

United States of America, ss.: To John W. Jacobus, Esq., Marshal of the United States for the Southern District of New York,, and Miguel Suarez Guanes, Esq., Consul of the Kingdom of Spain at the City of New York, GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington on the 2d Monday of Octo-
995 ber, 1890, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Southern District of New York, wherein Luis de Oteyza y Cortez is appellant, and you are appellees, to show cause, if any there be, why the judgment or order in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf. Witness the Honorable Samuel Blatchford, Associate Justice of the Supreme Court of the United States, on the 29th day of April, 1890.

Samuel Blatchford, Associate Justice of the Supreme Court of the United States.

996

IN THE

SUPREME COURT OF THE UNITED STATES.

997

LUIS DE OTEYZA Y CORTEZ,
Appellant,

vs.

JOHN W. JACOBUS, etc., and
MIGUEL SUAREZ GUANES.

It is hereby stipulated and agreed that the original exhibits herein may be transmitted by the Clerk of the Circuit Court of the United States for the Southern District of New York, with the Record on Appeal herein to the Supreme Court, the same to be returned to the files of the said Circuit Court immediately upon the determination of this appeal. 998

Dated New York, May 10, 1890.

S. MALLET-PREVOST,
Appellant's attorney.

OLCOTT, MESTRE & GONZALEZ,
Attorneys for appellees.

Ordered accordingly,

E. HENRY LACOMBE.

May 13, 1890.

999

(Endorsed:) Supreme Court of the United States, Luis de Oteyza y Cortez, appellant, *vs.* John W. Jacobus, etc., and Miguel Suarez Guanes. Stipulation and order as to transmission and return of exhibits. U. S. Circuit Court.

JOHN A. SHIELDS,
Clerk.

Filed May 13 1890.

1000 SUPREME COURT OF THE UNITED STATES.

LUIS DE OTEYZA Y CORTES,
Appellant,

vs.

JOHN W. JACOBUS, etc., and
MIGUEL SUAREZ GUANES,
Appellees.

1001 It is hereby stipulated and agreed that the foregoing papers, together with the accompanying original exhibits, constitute the record to be sent by the clerk of the Circuit Court of the United States for the Southern District of New York to the Supreme Court of the United States, on the appeal to the said Supreme Court in the above entitled proceeding.

S. MALLET-PREVOST,
Appellant's attorney.

OLCOTT, MESTRE & GONZALEZ,
Attorneys for appellees.

Dated New York, May 14, 1890.

1002 (Endorsed:) Supreme Court of the United States, Luis de Oteyza y Cortez, appellant, *vs.* John W. Jacobus, etc., and Miguel Suarez Guanes. Stipulation and order as to transmission of exhibits. U. S. Circuit Court.

JOHN A. SHIELDS,
Clerk.

Filed May 14, 1890.

IN THE SUPREME COURT OF THE UNITED STATES. 1003

Luiz de Oteyza y Cortez, appellant, *vs.* John W. Jacobus, etc., and Miguel Suarez Guanes, appellees.

United States of America, Southern District of New York, ss.: I, John A. Shields, Clerk of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, do hereby certify, that the foregoing pages, numbered 1 to , inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the case of Luis de Oteyza y Cortez, appellant, against John W. Jacobus and Michael Suarez Guanes, appellees, as the same remain of record and on file in said office. In testimony whereof, I have caused the seal of the said Court 1004 to be hereunto affixed, at the City of New York, in the Southern District of New York, in the 2d Circuit, this day of May, in the year of our Lord, 1890, and of the independence of the United States the 114th.

1005

FILED
MAY 19 1890
JAMES H. MCKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1889.

LUIS DE OTEYZA Y CORTEZ, APPELLANT,

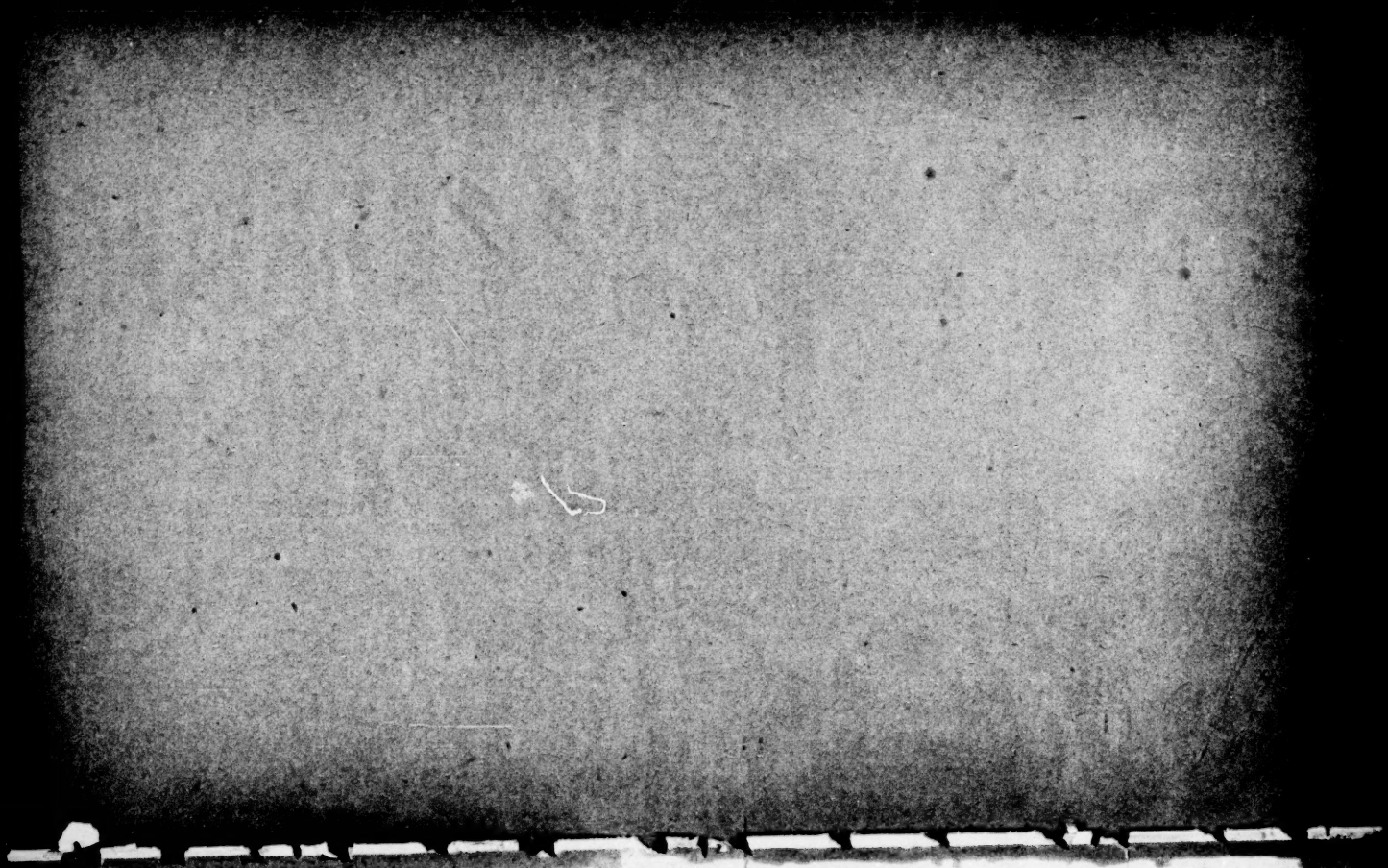
vs.

JOHN W. JACOBUS, ETC., AND MIGUEL SUAREZ GUANES, APPELLEES.

Brief of Counsel for Spain, the Demanding Government.

EMMET R. OLCOTT,
Of Counsel for Spain.

JUDD & DETWEILER, PRINTERS.



Supreme Court of the United States.

LUIS DE OTEYZA Y CORTES, APPELLANT,

v.

JOHN J. JACOBUS, ETC., AND MIGUEL SUAREZ GUAVES, APPELLEES.

BRIEF OF COUNSEL FOR SPAIN.

STATEMENT.

It is admitted by Oteyza that he was an official in the employ of the Spanish Government from October 8, 1889, and that he left Cuba December 28, 1889.

The following is an analysis of the evidence in the case. See Exhibits 3, 18, and 25 of the demanding Government and Exhibit 13 of the Prisoner, *and the facts set forth are not denied by the prisoner.*

(Ex. 3, p. 153.) The Spanish Bank writes to the Governor General, enclosing statement of coupons of the Redeemable Debt and of the annuities paid by the Bank by virtue of notice from the Comptroller's office of the Bureau of Debt (Oteyza's office) from November 1st to December 5th, 1889.

Coupons amounting to	$128,766 12
Annuities to	69,730 00
Total	$198,496 12

(Ex. 3, p. 220.) Oteyza was Secretary and Comptroller of the Board of Debt, which offices had been merged in one person (Ex. 3, p. 190).

Oteyza in his official capacity received into his custody certain public securities, and he signed Exhibit 18, found among his papers when arrested, and the Minute Book of Receipts (Ex. 3, p. 189) and Deliveries (October 8, 1889), when he took possession of the office from his predecessor, Francisco Lopez de Haro.

(P. 189.) José Marcos Llera, his successor, exhibits this Minute Book to the Criminal Court, and therein is found that, October 8, 1889, under inventory, de Haro delivered the office to Oteyza and in the schedule of Books of final bonds and titles of the debt that were kept in the office of the Comptroller is found a book, Series "F," with *bonds of the Redeemable Debt* of $1,000 each and numbered from 16,001 to 16,500. This record of delivery to Oteyza is also mentioned.

The administrative proceedings begins at—

(*Id.*, p. 154.) December 26, 1889, Urzias (the Intendant General of the Treasury), orders Francisco Lopez de Haro (the predecessor in office of Oteyza), to go to the office of the Secretary and Comptroller of the Debt (Oteyza), and investigate and report.

(*Id.*, p. 155.) Oteyza is informed of the order of Urzias.

(*Id.*, p. 156.) December 28, Oteyza is directed to appear, but cannot be found.

(*Id.*, p. 156.) December 30, Herrera states he has a letter, without date, from Oteyza, saying he had resigned, but did not wish it known until he sailed.

(*Id.*, p. 157.) De Haro states to the Provisional Chief in charge of the office of Oteyza, that 60 lists are issued without the usual previous formalities. Orders Maig to appear and is told that the latter is absent.

(*Id.*, p. 159.) De Haro then examines statement of issue of bonds of the Redeemable Debt, which shows proper number to date 15,000. He examines lists of the coupons paid and finds the number starts with 16,000. He asks for the notes of the entry book as to Stub Books, taken from deposit in

order to know whether the Stub Book with Number 16,000 has (*Id.*, p. 159) been legally taken from deposit and he is told that Oteyza has taken it away.

(*Id.*, p. 160.) de Haro with the Notary of the Treasury and the temporary chief of Oteyza's office open the safe and take (*Id.*, p. 161) out and compare the securities therein contained. They examine the record showing the delivery of the office by de Haro and the docket signed "Received" by Oteyza, October 8, 1889, and the "*securities*" were compared with those taken from the safe of deposit, and it resulted that the complete Stub Book Series "F" of the Redeemable Debt Number 16,001 to 16,500 with all coupons was missing, and that the lists of coupons paid showed that the numbers of the coupons corresponded to the numbers in the Stub Book of Series "F."

(*Id.*, p. 162.) de Haro directs notice be given of the disappearance of Stub Book of the Redeemable Bonds of the Debt Series "F," which is not issued for circulation in the market.

(*Id.*, p. 163.) de Haro makes his report. He states that in the lists of coupons paid between November 1st and December 5th there are sixty that lack justification, the coupons belonging to bonds not yet issued, and that their Stub Book used to be "in the safe for deposits" found in the office of Oteyza; that it has been proven that the Stub Book (*Id.*, p. 163) has been taken away from said safe, *which fact alone constitutes a crime punishable under the Criminal Code*, the Courts of Justice should take cognizance of, and a copy of the present proceedings should be sent to the Court.

(*Id.*, p. 163.) Urzais directs the proceedings to be sent immediately to the District Attorney.

(*Id.*, p. 164.) de Haro sends the proceedings to the District Attorney, including therewith communications from the office of the Intendant of the Spanish Bank, asking if the latter has *two orders from the said office directing certain sums to be retained for payment of coupons;* the bank's reply affirmatively sending copies; another from the Governor General stating that he orders the detention in the Civil Government of Prado.

(*Id.*, p. 165.) The administrative proceedings are certified and sent to the District Attorney.

(*Id.*, pp. 165 to 169.) Here begin the criminal proceedings.

The Bill of Complaint addressed to the Criminal Court sets forth that December 26 the investigation of the office of Oteyza was ordered to be made in connection with the payment of the coupons, and then recites the results of the administrative proceedings.

(*Id.*, p. 166.) The complaint states that the record shows that the issues to date reach only Number 15,000, and that the coupons begin with Number 16,000; that the examination of the safe of deposits in the Board of the Debt show that the Stub Book Series "F" number 16,001 to 16,500 with all coupons were collected at the Spanish Bank; and that therefore it is perfectly proven that there is *Malversation of Public Funds*, punished by Section 4 of Article 401 of the Penal Code, in the amount of $100,000, in which amount cannot be included for the present the value of the bonds in the Stub Book, because not set forth in the administrative proceedings.

The Complaint charges criminal responsibility for the crime against Maig, Oteyza, Prado, and the bearers of the coupons, and lists Andrade, Valdes, and Remus, and states it to be proven that Oteyza and Maig have also committed the crime of Abandonment of Public Office, specified in Section 383 of the Penal Code, and requests the arrest of these parties.

(*Id.*, pp. 169, 170.) The Criminal Court, consisting of three Judges, Messieurs Fuentes, de Palma, and Ecay, makes its decree reciting that the District Attorney had presented the Complaint against the above-named parties for the crime of *Malversation of Public Funds*. That it appears from the proceedings annexed by the District Attorney to the Complaint, that on the examination made of the safe of deposit of Oteyza Stub Book Series "F," Numbered 16,001 to 16,500 with all coupons was missing, and that the coupons *which were due* have been collected at the Spanish Bank; and considering that the acts denounced by the District Attorney

have all the characteristics of the crimes of *Malversation of Public Funds and Abandonment of Public Office*, specified in Articles 401 and 383 of the Penal Code; and considering that under section 3 of Article 4 of the Additional Organic Law the Court is competent to take cognizance of the proceedings, that the parties above referred to are declared to be under prosecution.

(*Id.*, p. 170.) Judge de Palma is assigned to take charge of this case.

(*Id.*, pp. 171 to 175.) Prado the Intendant of the Treasury, in office at the time of the occurrences stated, and who with Oteyza and Maig signed the lists or invoices, makes his statement.

(*Id.*, p. 172.) He states he remembers signing the sixty lists. He is asked the practice as to examining and paying coupons of the Board of the Debt, and states, that his part in the matter is limited *to authorizing the lists prepared by the Comptroller of the debt* (Oteyza), for the purpose of completing the personality of the Comptroller (Oteyza), whose warrants will not be obeyed by the Bank without such requirements. He then narrates the procedure as to the collection of coupons.

(*Id.*, p. 175.) When the temporary chief in charge of the office of Oteyza was directed to bring the proceedings under which the $100,000 of coupons were directed to be paid, he states that they have disappeared.

(*Id.*, p. 184.) Mr. Gelats of the firm of N. Gelats and Company, testifies to the transfer by cable for Oteyza of two amounts of money respectively for $500 and for $77,000 in gold.

(*Id.*, p. 185.) Mr. Runken of H. Upman & Company states, that his firm gave Andrade five drafts of 200 pounds sterling to the order of Mrs. Francisca Cortes (mother of Oteyza).

(*Id.*, p. 186.) Mr. Gelats amplifies his statement and gives the denomination of the bills delivered to pay $79,129.07, the cost of the cable transfer, showing the large denomination of the bills.

(*Id.*, pp. 187, 188.) Villalba, the broker, testifies to receiving instructions from Oteyza as to the transfer by cable of

15,000 pounds sterling, a change being made from drafts to the cable transfer on the 28th day of December (this was the day the investigation of his office began).

(*Id.*, p. 189.) Llera, the successor of Oteyza, exhibits the Book of Minutes of Receipts and Deliveries, which show that on October 8, 1889, when de Haro, the predecessor of Oteyza, delivered the office to the latter, an inventory was made showing in the Schedule the Book Series "F" the bonds being each of $1,000 (covering the numbers 16,001 to 16,500) of the Redeemable Debt.

(*Id.*, p. 190.) Llera states that the place of custody of the coupons (16,001 to 16,500) has two keys, but that the Secretary is the one having them in possession, as the office of Secretary and Comptroller of the Board of the Debt had been merged in one person.

(*Id.*, pp. 193, 194.) The Court orders the provisional arrest of Oteyza, stating that it appears that from the Office of the Secretary (Oteyza), and the safe in the office, the custody of which was entrusted to Oteyza, there has been taken away the Stub Book of Redeemable Bonds, Series "F" the coupons to which in the amount of $100,000 were collected at the Spanish Bank, and that the indications showing Oteyza culpable, he was declared prosecuted and his arrest ordered; that he has absented himself from Havana, and left for the United States; that the District Attorney filed a criminal complaint against Oteyza and others for the crime of *Malversation and Abandonment of Office*; and considering that the crime of *Malversation* is punished under Section 4 of Article 401 of the Penal Code; that there are grounds to believe Oteyza criminally responsible for such crime, his provisional imprisonment is ordered.

(*Id.*, p. 194.) The District Attorney states, that appears from the proceedings that Oteyza has been adjudged to be criminally responsible of the crime of *Malversation of Public Funds*. Therefore he applies for proceedings of Extradition, since, according to the supplementary agreement between *Spain and the United States* the Government of the United States is bound to deliver to Spain parties accused or convicted, among other crimes, of the taking away or criminal

Malversation of Public Funds, committed within the jurisdiction of Spain by public employees, as set forth in Section 13 of Article 2.

(*Id.*, p. 195.) The Criminal Court makes an order that it appearing that Oteyza has been declared prosecuted and his provisional imprisonment decreed for *Malversation of Public Funds;* that Oteyza was Secretary Comptroller of the Debt, that the District Attorney has requested the institution of proceedings of extradition; that all the requirements specified in the *treaty between Spain and the United States* have been complied with; and considering that the crime for which Oteyza is prosecuted is punished according to Section 4 of Article 401—that therefore the extradition proceedings should be applied for.

(*Id.*, p. 200.) Villalba, the broker, amplifies his statement, stating that when Oteyza directed him to purchase exchange for 15,000 pounds (December 27), Oteyza stated it was to be to the order of Mrs. Francisca Cortes, value received from Antonio Munoz Romeo, and that the bills were so drawn, but that he refused them the day after, preferring a cable transfer.

(*Id.*, p. 200.) The letter of Oteyza to Herrera, when he left without having his accounts passed, is given.

(*Id.*, pp. 201 to 208.) Deposition of Antonino Andrade y Lopez. This witness was the agent of Oteyza to engineer the payment of the coupons 16,001 to 16,500.

(*Id*, p. 204.) Being shown twenty covers and asked if the signature A. Andrade thereto was made by him, he answered, it was. In the beginning of November Oteyza asked him to collect some coupons of Bonds of the Redeemable Debt; that the transaction was large and it was necessary to divide the matter into three parts, as cash could not be collected in the Bank until the month of December.

(*Id.*, p. 205.) That he gave receipt for the amount; and that he selected Fernando Valdes and Juan Remus to assist in the matter.

(*Id.*, p. 205.) Oteyza, about the middle of November, at the Hotel Florida, delivered twenty copies in triplicate, which were signed by Andrade, and, afterwards, forty

others, which were signed at the house of Andrade by Valdes and Remus.

That on Saturday, November 30th, Oteyza told him to come the next day and get the first twenty covers and coupons, and he did so. That on Monday, December 2d, Andrade went to the Spanish Bank and presented the coupons and lists, and asked for gold bills of large denomination, being so requested by Oteyza. That he received $30,000 (*Id*, p. 207) in gold bills and $16,000 in a check.

(*Id.*, p. 207.) That on the 2d of December he delivered the $46,000 to Oteyza, when the latter told him to come on Wednesday for the $41,000 of the lists signed by Remus. That on Tuesday, December 3d, he notified Remus, he then having in his possession the lists and coupons that Oteyza had given him; and on Wednesday he went with Remus to the door of the Bank, and that Remus requested bills of large denominations should be kept for him; that Remus came out of the bank at 2:45 P. M., with $11,000 in gold bills, having ordered the Bank to place $30,000 to the credit of Andrade.

(*Id.*, p. 210.) The Intendant General states the course of procedure as to the examination and payment of coupons prior to December 5th, 1889, in the Board of the Bureau of Debt, so that three covers were signed by the holder of the coupons, giving the *date when due, the series and the number, the value of the coupons presented for collection.* These covers were delivered to the official in charge of the Bureau of the payment of the coupons to compare the numbers appearing in the covers. After comparison, and being assured by the entries that they had not been paid, he had to report to the Chief of the Bureau, who, after inspecting the Book of Issues and the bonds in circulation, reports in turn to the Secretary Comptroller (Oteyza).

The chief of the office, the Secretary Comptroller (Oteyza), decided whether the order for payment should be issued or not, one of the covers, which is considered the original, was signed by the Intendente (Prado) at the place where the direction for payment was entered. Then the respective coupons are perforated in the presence of the interested parties, in the office of the Debt, and the same accompanied by

the original lists are paid by the Spanish Bank, which at the same time for this purpose receives as directed the order of payment, the second cover authorized by the Clerk and Secretary.

(*Id.*, p. 214.) Andrade states that he paid Oteyza the balance of the $41,000 of the covers signed by Remus at three o'clock of Wednesday, December 4th, when he collected $20,000 in bills and delivered to him $31,000 in gold bills and a check for $10,000.

(*Id.*, pp. 214, 215.) Andrade says that, as to the lists signed by Valdes, he accompanied Valdes to the Bank with the coupons and lists on the 6th or 7th of December, directing Valdes to ask for gold bills of large denomination as instructed by Oteyza. That Valdes collected $5,000 or $6,000 in gold bills, and the balance was credited to the account of Andrade, who afterwards delivered to Oteyza the gold bills collected and a check for the balance. That he delivered such money immediately to Oteyza, having thus balanced all the account, *Oteyza having received the* $100,000, the amount of the sixty lists.

(*Id.*, p. 215,) Andrade is asked whether he saw the coupons that Oteyza gave him *before they were perforated*, and he *answered that he had not, because Oteyza delivered them to him perforated*, and in packages, in order correlative to the dates when they became due, and that each package was bound with rubber bands.

(*Id.*, pp. 216, 217, 218.) Remus makes his statement. He recognizes his signatures to the twenty covers, and he verifies the statements of Andrade.

(*Id.*, p. 219.) Valdes recognizes the twenty covers that were signed by him and verifies the statements of Andrade.

(*Id.*, p. 222.) Mr. Gelats amplifies his statement and produces a memorandum of the order by Oteysa for 15,000 pounds sterling exchange.

(*Id.*, p. 223.) Villalba amplifies his statement and says that the order for 15,000 pounds for exchange was written by Oteyza, except so much as is explained by Villalba.

(*Id.*, pp. 225, 226.) Antonio Munoz Romero testifies. This is the person stated by Oteyza, for whom the remittances were sent through Gelats and Upman. Romero says he is

clerk and waiter at the Hotel Florida; that he knows Oteyza, because he takes cares of his room; and that he never intended to make a transfer of 15,000 pounds to Mrs. Francisco Cortes, nor did Oteyza ask permission of him to use his name and surname to make such transfer; that he never knew any person of his own name in Havana.

(*Id.*, p. 227.) The Spanish Bank certifies that coupons 16,051 to 16,280 were collected by the bearer, A. Andrade, December 2d; and numbers 16,296 to 16,500 by Remus, December 4th; 16,001 to 16,050, and 16,281 to 16,295 were collected by Valdes, December 5th; and that these were coupons belonged to the Bonds of the Redeemable Debt, Series "F."

(*Id.*, p. 228). The Judge of the Criminal Court certifies that in the Inventory of Books, Stub Books, documents and other (efectos is the word used in the original Exh. No. 5, see page 112 of Spanish Original, Line 4 from the bottom of page) existing on hand in the office of the Secretary of the Board of the Debt, of which delivery was made October 8, 1889, by the retiring Secretary, Mr. Francisco Lopez de Haro, was found as values (the original Spanish uses the word "valores," see page 113, 6th line from top) of which Oteyza took charge the following:

REDEEMABLE.

Books.	Series.	Amount of each Bond.	Numbers of Same.
1	F	$1,000.	16,001 to 16,500.

(Exs. 12, 13, 14, pp. 232, 233.) Among the papers found on Oteyza in New York were three receipts, two dated November 7, and one dated November 14, respectively for $46,000, $13,000 and $41,000. The amount specified in these receipts aggregated $100,000, which is the exact amount of the coupons 16,001 to 16,500, taken from the Book of Bonds, Series "F," and that were paid by the Spanish Bank from Government moneys on the lists already referred to. The receipts show the delivery of their respective amounts in coupons reading thus "of the Redeem-

" able Debt of the Island of Cuba, with the collection of " which said gentleman has commissioned me, I binding " myself to deliver the proceeds to him as soon as the same " have come to hand." They are all signed by Andrade.

(See Ex. 25 A, pp. 244, 245.)

Andrade identifies these receipts as receipts that were delivered by him to Oteyza for the coupons in question.

Article II of the prisoner's Exhibit 13 shows:

That the Redeemable Debt is divided into two classes represented by bonds *to bearer in* the form following:

SERIES,	CAPITAL, DOLLARS,	ANNUITY. DOLLARS.
* * * * * *	* * * * * *	* * * * * *
F,	1,000,	30.

The contention of the prisoner's Counsel is that the coupons in question that were paid by the Spanish bank, the fiscal Agent of the Spanish Government, on the Schedules or Invoices (a copy of the form of which is found at pp. 44, 45 of this brief), in cash to the amount of $100,000, *were cancelled before payment*, and, therefore, not "public funds" in the sense of the treaty definition, and were worthless because of no binding effect on the Government (Op. Commissioner, p. 141); and that the $100,000 were not public funds because the Spanish Bank was not the Spanish Government and its money was not "public funds" (Op. Judge Lacombe, p. 329); that the Cuban Court had not jurisdiction because no "administrative proceedings" were had (Op. Commissioner, p. 147), although such were actually had (p. 70–74); and that error was made by the Commissioner here in not admitting in *behalf of the prisoner ex parte* depositions and certificates which were not in the record of the proceedings in the Court in Cuba (p. 70–74).

The prisoner himself, in his *statement* before the Commissioner, not under oath, allowed under the practice in the State of New York (p. 103–119), says he presumes the administrative proceedings have "been prepared according to law" (p. 111), and *he does not directly deny that he received the* $100,000 *from Andrade.*

Oteyza's explanation of the receipts found in his baggage when arrested is ridiculous. He admits he signed certain receipts for coupons left in his office by Andrade, as broker, to have the usual invoices prepared, but says he did it out of friendship for Andrade, and that when the invoices were prepared Andrade did not bring back the receipts signed by him, Oteiza, because forgotten or lost, and that in exchange Andrade said he "would give some partial receipts to serve as releases," which he, Oteiza, kept among his papers (p. 114).

If these statements were true the receipts necessarily should read somewhat thus: "Having received the receipt of Mr. Luis Oteiza y Cortes for — coupons of the Redeemable Debt, &c., and such receipt having been lost or mislaid, this is to certify that I have duly received said coupons, etc." The receipts themselves identified by Andrade completely refute this false statement (pp. 222–223).

For the convenience of the Court the decision of the Commissioner is here given.

NEW YORK, March 13, 1890,
11 o'clock A. M.

Present—The Commissioner.

MR. OLCOTT—For demanding government.

MR. MALLET—Prevost for the prisoner.

The prisoner is produced by the U. S. Deputy Marshal.

The Commissioner.—I have decided in this case that the prisoner should be committed, for the following reasons:

The prisoner, Luis Oteiza y Cortes, was arrested on the 2nd day of January, 1890, in this city on a complaint made under oath by Miguel Suarez Guanes, Consul of the Kingdom of Spain at this port, charging him with having committed the crime of "embezzlement or criminal malversation "of public funds" within the jurisdiction of the Kingdom of Spain, in that, while the said Oteiza was the Secretary of the Bureau of Public Debt of the Island of Cuba, at Havana, and an officer in the employment of the Kingdom of Spain in that city, he did, as such officer and servant in charge of the

said Bureau, "on or about the 28th day of Decem- "ber, 1889, wrongfully and feloniously embezzle "bonds or certificates of indebtedness, belonging to "said public debt of the Island of Cuba, of the "value of $190,000, and converted the same to his "own use, and also the coupons of other govern- "ment bonds of the value of $500,000 and the stub "book thereof also." He is further charged with having, since the commission of said crime, fled from Cuba, and having sought an asylum within the United States of America. The complaint further goes on to state that criminal proceedings have been begun in the city of Havana against the said Cortes for said embezzlement; and his extradition is asked for, that he may be tried for said offence, pursuant to the provisions of the treaty or convention of extradition between the United States and Spain of January 5, 1877, and the supplementary treaty of August 7, 1882.

The defendant's contention, on the charges and proofs submitted here, is, that he is in no way implicated, except possibly in being negligent in signing the certificates upon which payment of the securities was made; that for this negligence he is responsible civilly, and not criminally,—a responsibility to be determined by the Administrative Commission, the proceedings of which, not yet concluded, also set forth in the evidence, were taken preliminary to the commencement of criminal proceedings, pursuant to the practice obtaining in Cuba. And that, if any criminality has been proved, it does not come within the treaty provision relating to "criminal malversation of public funds," under which his extradition is demanded, since the bonds have never been legally issued, one or more of the signatures necessary thereto never having been appended to the bonds; in consequence of which, the bonds in question, he claims, were cancelled by order of the government.

The evidence shows that the treasury of the Cuban Government has been defrauded into the

payment, through its fiscal agent, the Spanish Bank, of $100,000 or thereabouts, upon coupons which were detached from the bonds in question. In order to understand the way in which this fraud was carried out, as well as for the better understanding of the merits of the case as presented by the prosecution and the defence, it is necessary to examine into the method employed by the Cuban Government to liquidate the claims which constitute what is known in these proceedings as the "reedeemable debt" of the Spanish Government in the Island of Cuba.

By an Act of the Government, passed July 7th, 1882, provision was made for liquidating this debt by the issue of bonds with annuity or interest coupons attached; and a Board of Commissioners, comprised of a number of officials named in the act, was constituted for the purpose of passing upon the claims that should be presented, and of determining the issue of bonds to meet them. This act also specifies the duties of the person holding the office of Secretary Comptroller of the Board of Debt, the position which it is shown in this case, and not denied, the defendant held at the time of the commission of the fraud in question, he having taken office on October 8, 1889.

It was the duty of the defendant to examine into the claims as they were presented from time to time, and report them to the designated departments, which in turn submitted them to this Board of Commissioners, where they were admitted or rejected, as the case might be. The result of this was certified by the Secretary Comptroller to the Treasury Department, and then the bonds were prepared for issue—whether by the Secretary Comptroller, of the Treasury Department, or by whom, does not appear. A number of these bonds after being properly signed, were deposited as the law required for use as occasion required. The law provides (Article 117) that "*so long as* the office of "the Secretary of Debt has no special Treasurer,

"the *Comptroller of the Debt*, the Central Treasurer "and the Chief Ordenador of the Intendency "(Treasury) shall have charge of the keys of the "safe for the custody of effects and values, since "they are the ones who authorize the payment of "the debt, and the bonds shall be placed in the "custody of the Central Treasury."

The evidence in this case shows that, besides such bonds as were in the Central Treasury, there were a number of bonds kept in a safe of the office of the defendant, the Secretary-Comptroller of the debt, of which safe he had the keys. These bonds are preserved in bound books, called stub-books. The bonds in question, or the coupons, rather—for the stub-book containing the bonds has been abstracted—were annexed to the stub book known as "Series F," and were numbered from 16,001 to 16,500.

It is contended by the defendant that none of the bonds and coupons of the redeemable debt in the custody of the Comptroller were completed ready for issue, and that all were cancelled. But it does appear that certain bonds of the redeemable debt that were left in the custody of the Comptroller's office at a date prior to his qualifying as Comptroller were *burned* and *destroyed* by order of the Government, while others, consisting of a number of stub-books, including the said book in question, Series F, were not burned, but were left remaining in his custody.

It is necessary, also, to understand the method adopted for paying the coupons as they are presented by the holders. It seems that certain forms are required in order to secure the Government against impositions. The method appears to be for the holder of the coupons to present a list, called an invoice, setting forth the numbers of the coupons, the series of the bonds to which they belong, and their amount, together with the coupons themselves, at the office of the Comptroller of the Debt. This list is signed by the owner. The cou-

pons are thereupon, in his presence, examined by the Secretary's office, and, if identified as corresponding to the records of the office (for the office of the Secretary is supposed to have a complete record of all bonds), they are so certified by the Secretary and an under official (in this case Maig, also a fugitive from justice), and passed to the Treasury official, known as the "Intendant," who thereupon appends his own signature. The coupons meanwhile having been *stamped* or *perforated*, are returned to the holder, with the list or invoice. The invoices are made out in triplicate, and a second is presented to the Spanish Bank, the fiscal agent of the government, where the holder presents his coupons and list, and receives payment.

It is important to observe, in this connection, that these lists contain the following statement:

"The coupons specified herein, which amount to "a total of * * * have been presented on the "date of this invoice, have been cancelled by the "office of the Secretary-Comptroller in the presence "of the holder, and will be paid by the Spanish "Bank of the Island of Cuba, by virtue of the "order placed upon this invoice, upon presentation "thereof to the cashier of said bank, together with "the said coupons, whereon there shall be stamped "'paid' on the backs thereof, as without which "requisite they shall not be charged to the accounts "of said bank." Then follows the date and the signature of the Secretary-Comptroller, Chief of the Bureau; and underneath, "Let payment be "made to *bearer* upon presentation of this invoice "and of the coupons therein specified," signed by the Intendente General of Finance, and underneath the signature of the holder.

The bank, upon payment, also subscribes to the list, one copy of which it has retained, an endorsement of the date of payment, and the statement that "the coupons remain deposited in the safe of "this bank."

It is to be observed that no bonds had been pre-

pared by the Government since the defendant came into office; and it would seem, therefore, that all of the bonds, whether in the Treasury Department, or those that still remained with the Secretary of the Debt, including the bonds in question, had been prepared after the Board of Commissioners had adjudicated the claims, and after at least one or more of the signatures of the officials required to complete the bonds had been appended.

Proceeding, then, to the evidence in the case as to the defendant's guilt, the following appears: In the early part of November last, the defendant, so the witness Andrade testifies, asked the witness if he could collect some coupons of bonds of the redeemable debt, stating that there was a large amount of them, and that it would be necessary to divide them into three parts, because they could not be cashed at the bank until December. An arrangement was thereupon made with two other parties by Andrade, and an understanding by the prisoner to that effect, that the defendant should procure the coupons, and that the witness Andrade himself, and the two other parties, should sign the list above described as holders thereof, so that they might obtain the payment of the coupons on the bank. The defendant thereupon had the coupons cut from the bonds and the lists prepared, took them himelf to the witness Andrade, who gave the defendant the three receipts therefor in evidence in the case (hereinafter more particularly referred to); Andrade thereupon, and the two other parties, personating holders, signed the lists as "bearers"; the coupons described on the three lists or invoices, were presented at the Spanish Bank by them on the 2d, 4th and 7th days of December, or thereabouts, when they were paid, and the proceeds given to the defendant. The amount in this way collected was $100,000, which the witness Andrade testifies he delivered over to the defendant on or about the 7th of December. The presentation of

these coupons at the request of the witness Andrade by the other two parties is testified to by *them*, and the payments thereon, as above stated, to them, are also confirmed by them and by the bank. The motive stated by Andrade for his engaging in the matter is claimed to have been entirely innocent, and was simply to obtain a commission upon the transaction, as in other cases of the collection of coupons. Nevertheless, both he and the two alleged confederates have been under criminal prosecution at Havana for participation in this offence.

About this time, and subsequent to the payment of the coupons, the defendant is shown to have procured two bills of exchange, for the sum of $500 and $5,000 respectively, drawn upon a broker in the city of Madrid, in favor of Francisca Cortes, the mother of the defendant; and on the *27th* of December, the testimony shows the defendant applied for drafts for $75,000 to the order of a broker in Madrid in favor of one *Romero*, stating to the broker, at the same time, that he wished the drafts to be prepared and ready at nine o'clock of the 28th. It appears that on the 28th, at nine o'clock, he appeared at the office of the broker, and stated that he wanted, instead of sterling exchange, a transfer by cable on Madrid in favor of the same party, Romero, the defendant being compelled to pay in order to obtain said transfer, the sum of $79,000 or thereabouts. It also appears in evidence that on the 27th day of December proceedings had been taken by the Government to investigate payments of invoices made by the bank, through a certain period of time, covering the period in question; that the defendant was applied to, to furnish the lists, &c., and was directed to appear for examination on the following day, the 28th; that, instead of appearing for examination on the 28th, he left a letter with the Government official, representing him at his office, stating that "on account of the "personal antagonism of some of the officers, he "had resigned his position, which fact he did not

"wish to have known until he had sailed, so that "no explanation would be asked of him by his "friends, and that his enemies could not misrep- "resent him," &c.

Subsequently the safe in his office was opened by order of the chief investigator appointed by the Government; and in his report of the 31st of December, 1889, the following appears: "The secu- "rities were compared with those that were taken "from the safe of deposit" (referring to the securities that are shown by the exhibits to have been in that safe at the time the defendant assumed office, October 8, 1889), "and it appears that the "complete stub book of Series F of the redeemable "debt, numbered 16,001 to 16,500, with all their "coupons, was missing. Having also examined "the list, which appear to have been paid without "previous authentication, or without proof of it, "it also appeared that the numbers of the coupons "corresponding to said list, corresponding precisely "in numbers to the bonds, corresponded to said "stub book missing," &c.

The defendant is shown to have left Havana on the morning of the 28th of December, and, as already stated, was soon afterwards arrested in this city, and on his persons were found certain papers, being exhibits in this case, viz., a passport for himself to travel in the *United States*, a passport for one Romero to travel in the "*Peninsula*" (meaning Spain), and the three receipts from the above mentioned witness Andrade, for the coupons above referred to, for the amounts of $13,000, $41,000 and $46,000 respectively (total $100,000). In other respects the receipts reads as follows: "Received "from Mr. ————, $— ————, in coupons, "of the redeemable debt of the Island of Cuba, "with the collection of which said gentleman has "commissioned me, I binding myself to deliver the "proceeds to him as soon as the same shall come "to hand, and for his protection I sign these

"presents at Havana on the 14th day of November, "1889." (Signed) "A. ANDRADE."

The contention of the prosecution is that the defendant intended the passport in the name of Romero, to be used by him in case he proceeded to Spain, in order that he might travel under an assumed name; and that he procured for that purpose the transfer of the $77,000 in the name of Romero, that he might collect the funds without being identified; that he had no intention of traveling in Spain under his own name, and that, therefore, the passport in *his own* name was obtained simply for use in the *United States*.

There is nothing in the testimony to contradict the case as made against the defendant except his personal statement, not made under oath, and made by him under the practice now prevailing under the criminal code of this State. This statement the prosecution contend will not bear examination, and a careful scrutiny of it, it seems to me, fully confirms the view taken of it by the prosecution.

The explanation of the defendant of his possession of the three receipts, as well as of the use of the name of Romero in the passport and in the draft, will not bear examination, and the suspicious circumstances are not satisfactorily explained.

There can be no question but that, so far as the facts are concerned, it is the duty of the committing magistrate to pass upon his branch of the case as one calling for a trial of the prisoner rather than for his discharge.

But the prisoner is, nevertheless, entitled to his discharge, unless the prosecution also show that the offence in this case comes within the terms of the treaty under which his extradition is asked.

It is contended by the defendant that the bonds and coupons in question were never issued; that the signatures of these bonds were never all of them appended, that they could not be legalized because some of the officers whose signatures were necessary, have gone out of office since the date of the

bonds; and that, as a result of this imperfection, the bonds were ordered to be cancelled, and were accordingly punched. In other words, the defendant's contention is that he cannot be held on a charge of embezzlement of public funds, because the securities in question were simply worthless and of no binding effect on the government.

In the criminal proceedings at Havana, it appears that the Criminal Court, having ordered the Intendencia General to make an investigation about the payment of the coupons of the debt, a report appears from him, as follows: "In the safe of the "office of the Secretary of the Board of Debt there "were only two stub books without the necessary "requirements for making the payment ordered by "the board; that *some of them* had the bonds and "coupons cancelled, and others *were not cancelled*, "but lacking always the requirements of author-"ization for making payments with them; and "that at this time he cannot report by whom they "were cancelled, on account of what orders, be-"cause the deposits of said bonds was made so long "ago," &c.

Nevertheless, in the early part of the investigation; the chief investigator, de Haro, appointed by the Government, reports as follows: "Having ex-"amined the statement showing the issue of bonds "of the redeemable debt; and it appearing from "the same that issues made to date only reaches to "the number 15,000; and having also examined "the lists paid which appear without legal justifi-"cation in the payments of the coupons correspond-"ing to the same; and it appearing from the said "list that the numeration of the aforesaid coupons "start from 16,000 onward; it is concluded that "said coupons paid are either forged, or belong to "stub books that have not been officially legalized "for the issuing thereof; and, therefore, let the "chief *pro tem* of the office of the debt present the "notes of the entry book as to stub books of cer-"tificates taken from the deposit for legalization,

" in order to prove if the stub book 16,000 has or " has not been legally taken from the aforesaid " deposit."

As a matter of fact, it is not clear in just what condition the missing bonds were with reference to the requirements of the law to make them complete. But the circumstance must be borne in mind, in this connection, that some of the coupons were in such a state that they could be collected after having been detached from the bonds. And this, certainly, has a bearing upon the question as to whether all of the bonds in question to which they were attached were cancelled. Certainly, if the missing book of bonds were produced, all these doubts would be solved. Where is it? Can the prisoner be heard to demand positive proof on this point, and at the same time withhold the book which he is shown to have purloined, property entrusted to him as an official of the Government, and deposited in his office in a safe, the keys of which were in his control, thus depriving the Government of its property and at the same time demanding of that Government proof of the contents of that book beyond the peradventure of a doubt, before putting him upon his trial for the offence of embezzlement? He has been entrusted as a high official or the Government with these very bonds and others, and has abused his trust and made use of his office to abstract a portion of these bonds, as well as to defraud his Government into payment of the coupons with which he was entrusted.

See Bishop's Crim. Law, Vol. 2, Sec. 364.

31 Cal. *in re* Hedley.

But, leaving the question raised by the defendant as to whether the bonds in question were or were not public funds, depending, as he claims, upon whether they were or were not valueless, one thing is clear and that is that the coupons which had been detached from those bonds in question by the

defendant were in such a state that when, by the terms thereof, they became due, they could be, through the instrumentality of the defendant's signature, collected of the Government by the *bearer*, whoever he might happen to be, and were, in fact, as already shown, so collected to the extent of $100,000. Were not these, then public securities —which it will be conceded are included within the generally accepted definition of "public funds"? We cannot agree with the defendant's counsel that the bank, which, it is shown, does not pay the coupons until they themselves are presented, would be bound to pay them under the order of the invoice, even though they should appear on their face to be invalid and worthless.

If we turn to the decisions of the Courts in this country, we find instances where the securities had not been legally issued by banks, although they had been completely signed, and yet, having been taken from the possession of the bank by means of a robbery committed upon it, it was held, on an indictment for "receiving promissory notes usually called bank notes," in answer to the objection that they were of no value, and therefore could not be the subject of an indictment, that they were of *some value*, and that it was a case in which a most serious *injury* was intended, and that had the issues been put in *circulation*, though *tortiously*, the bank might have been ruined; and that there was no color for saying that the securities in question had no intrinsic value. (See People *vs.* Wylie, 3 Hill, 194.)

In a case in Massachusetts, Commonwealth *vs.* Ramm, 7 Metcalf, 475, where the indictment was for larceny of certain *bank bills* which had been redeemed by the bank, and were in the *hands* of its agents at the *time of the theft*, the Court held that an indictment was sufficient which specified the property as "bank bills."

Both these cases are cited and approved in the case of Bork *vs.* People, 91 N. Y., p. 5. Others,

too, have been cited by the prosecution to the same effect.

Applying this principle to the coupons in question, it would seem that if the offence charged should be committed here, the prisoner should, at least, *be committed for trial* under an indictment specifying the "embezzlement of public funds."

But the facts proved in the case would certainly make him amenable for criminal prosecution for "embezzlement," as the law stood at the time of the enactment of the treaty, under the statutes in this State as they existed at that time. The offence charged comes within subdivision 2 of Section 528 of the New York Penal Code, passed July 26, 1881, and Laws of New York, 1874, Ch. 207.

This branch of the defence is not unlike that interposed in McMahon *ex.* Benson, reported in 127 U. S. Sup. Ct. Rep. The extradition of the prisoner in that case was asked for by the Mexican Government on the claim that he had committed forgery in the city of Mexico. The specific act alleged was, that he had forged the name of the proprietor of an operatic company to tickets of admission to a performance to be given by them in the city of Mexico, by causing such tickets to have printed upon their face the name of the proprietor, without his authority, &c. The defense claimed that the facts did not bring the offence within the definition of forgery as known to the common law; and the Supreme Court held that the common law could hardly be said to be the only criterion by which to construe the language of a treaty between Mexico and the United States. That there were no common law crimes of the United States, and that the common law was only appealed to as an aid in the definition of crimes; that the Spanish term for the designation of the crime of forgery was "la falsification." From all which it did not appear that the Mexican authorities intended to be

bound in the treaty by any very restricted use of the word "forgery" when the question concerned an offense of that character committed in Mexico. That it was for an offense against Mexican law that the prisoner was held to answer; and that the question was simply whether he had committed an offense for which, according to the treaty, he should be extradited to that country and there tried.

As to the interpretation to be put upon the acts in question of this defendant when applying the phraseology of the treaty, "embezzlement or criminal malversation of public funds," the case seems stronger for remanding the prisoner for trial than in the case above cited. For, in this case, not only has the criminal investigation by the Spanish Courts at Havana been ordered by the criminal court, three judges, in accordance with the practice obtaining there in such cases, having before it, among other things, as shown by the complaint of the "Attorney for his Majesty" there, the report of the chief investigator, referring to the bonds in question as "not having been officially legalized for the issuing thereof"; but the Court say, in their decree appointing one of their number to continue the criminal proceedings against the defendant and others, "whereas it appears from the annexed pro-
"ceedings annexed by the Attorney General to his
"complaint, that upon examination made by the
"chief investigator of the safe deposit of the board
"of debt, it has been found that there is missing a
"complete stub book of the series F, from No.
"16,001 to No. 16,500, with all its coupons; and
"that the said coupons which were due have been
"collected at the Spanish Bank, as it appears
"proven by the sixty lists found in the admin-
"istrative proceedings. Considering that the acts
"denounced by the Attorney General have all the
"characters of the crime of malversation of public
"funds and abandonment of public office, speci-
"in Articles 401 and 383 of the Penal Code. Con-.

"sidering that, in accordance with Section 3 of "Article 4 of the additional organic law, this "Court is competent to take cognizance of criminal "proceedings against the administrative author- "ities of these provinces. This Court declares "itself competent to prosecute this cause and take "cognizance of the same," &c., &c. And the Judge who was appointed by their number to continue the criminal proceedings, subsequently, in the proceedings proved in this investigation, reiterates the same charge.

The above facts are referred to, not as decisions *res adjudicata* upon the point raised by the defendant, for as to him they were *ex parte*, but certainly they are to be regarded as showing the construction put upon the offense by the criminal Judges of the Spanish Government sitting at Havana.

The difficulty of defining, in an extradition proceeding such *as the present*, the exact meaning to be put upon words of a treaty expressed in a foreign language, is very well illustrated in the present case. The language of the supplementary treaty of April 9, 1883, reads in Spanish, corresponding to the English translation therein "embezzlement or criminal malversation of public funds," "la sustraccion ó malversacion criminal de fondos publicos," which identical expression is used by the attorney for His Majesty in the criminal Court at Havana, upon which was based the decrees of the three Judges referred to, as a description of the offense charged against the defendant. And the section of the Spanish Code which those Judges refer to, at the same time, as the one covering the offense of the prisoner, is article 401 of the Penal Code of Cuba. Upon examining the article referred to, it appears as the first article under Chapter 10, entitled "malversacion de caudales publicos"; and throughout this chapter the phrase "caudales publicos," which has evidently been translated "public funds," is regarded as comprising the term "ef-

fects"; for wherever it appears in that section, we have the phrase "caudales ó effectos publicos," meaning "funds or public effects." Furthermore, in article 13 of the treaty, the word "embezzlement" therein, instead of corresponding to the Spanish "la sustraccion," as in article 12, is made to correspond to the Spanish phrase "malversacion de caudales;" and this last phrase, as already stated, appears in the title of Chapter 10 of the Penal Code above referred to.

The conclusion would seem to be that the Spanish term, translated in English in the treaty as "public funds" was more comprehensive than the restricted sense which the defendant contends for.

Without referring at length to a further contention by the defendant that the Cuban Court is without jurisdiction by reason of the proceedings showing a defect in the practice, it is sufficient to say that it does not seem to be well taken. From the record as produced it would seem that the Court there has substantially complied with the law requiring that a preliminary investigation, known as the "administrative proceedings," should be taken. It was these proceedings that the record shows the defendant had notice of before his departure from Cuba; and it was not until they had arrived at that stage where it seemed that he institution of criminal proceedings was necessary that they were commenced. The chief investigator says that it is in his opinion "indispensable that the "Courts of justice should take cognizance of the "same," &c., and proceeds to certify the record of the administrative proceedings to the attorney for his Majesty, who, in his application for the order of arrest, recites the preliminary "administrative pro-"ceedings." And, furthermore, in the decree of the Court above referred to, three Judges sitting, the declaration of the Court is made to the effect that it is "competent to take cognizance of the crim-"inal proceedings against the administrative au-"thorities of these provinces." This, it seems to

me, should be regarded in these extradition proceedings as *prima facie* proof that the criminal proceedings were regularly taken.

The able argument and brief of the counsel for the defendant have been carefully considered; and on that account, the reasons for the conclusion reached in this case, above set forth, have been extended beyond the limits that the case would otherwise have received.

The duty of the committing magistrate in the asylum country, in extradition proceedings, is clearly laid down in the case of Benson *supra*, where the Supreme Court say that the proceeding before the Commissioner is not to be "regarded in "the nature of a final trial, by which the prisoner "could be convicted or acquitted of the crime "charged against him, but rather of the character of "those preliminary examinations which take place "every day in this country before an examining or "committing magistrate for the purpose of deter-"mining whether a case is made out which will jus-"tify the holding of the accused, either by impris-"onment or under bail, to ultimately answer to an "indictment or other proceedings, in which he "shall be finally tried upon the charge made "against him."

See also *in re* Farez, 7 Blatchford, 344;
and *in re* Herris, 33 Fed. Rep., 165.

The facts proved here present a case to which the decision *in re* Benson is peculiarly applicable. The difficulty of determining the condition in which the bonds that were abstracted were at the time they were taken as well as the other material facts in the case, not to mention the question of liability of the bank thereon under the Spanish civil law, in any other tribunal than one sitting in the foreign country, in the place where the offense was committed, is apparent; and no other view than that expressed by the Supreme Court would make it practicable to enforce the treaty in the spirit in which it was made

and intended, in such a case as the one now under examination.

The conclusion is, therefore, reached that the prisoner should be remanded for trial in the Courts of the demanding country.

POINTS.

I.

Since the treaty with Spain provides (Article I.) that the surrender shall take place upon such evidence of criminality as, according to the laws of *the place where the fugitive or person so charged shall be found*, would justify his apprehension and commitment for trial if the crime or offence had been there committed, the first question that presents itself is

Would the facts here presented by the demanding Government before the Commissioner justify the apprehension and commitment of Oteyza for trial if the crime or offence had been there committed in the State of New York, where he was found ?

The words of the preamble of the treaty with Spain are that they are to be delivered who are "persons charged with or convicted of the crimes hereinafter enumerated."

In Article XI. it is provided that upon complaint made on oath a warrant shall be issued.

Article XII. of the *Supplementary Convention* provides that if the preliminary warrant of arrest has been issued in pursuance of a request or declaration received by telegraph from the Government asking for the extradition, it shall be competent for the Judge or Magistrate to hold the accused for a period not exceeding twenty-five days, *so that the demanding Government may have opportunity to lay before such Judge or Magistrate legal evidence of the guilt of the accused.*

This is what happened in the present case. A complaint was sworn to on cablegrams (see complaint) and application made to the Commissioner for time to produce the copy of the warrant of arrest and depositions from Cuba, and by him granted, and, afterwards, the legal evidence of the

guilt of the accused was laid before the Commissioner, the treaty (Article XI.) requiring where, as in Oteyza's case, a person is merely charged with crime "a duly authenticated copy of the warrant of arrest in the country where the crime was committed, and of the depositions upon which such warrant may have been issued, shall be produced with such other evidence or proof as may be deemed competent in the case." All of this was done (See Exh. 3).

In extradition treaties, the last of which is with Spain, the provision is new and in accord with the present practice to forward a request by cablegram —that where the warrant of arrest has been issued " in pursuance of a request or declaration received " by telegraph from the Government asking for the " extradition, it shall be competent for the Judge " or Magistrate to hold the accused for a period not " exceeding twenty-five days, so that the demand- " ing government may have opportunity *to lay be-* "*fore such Judge or Magistrate legal evidence of the guilt of the accused.*"

Hence all that, under this treaty provision, could be required, would be a brief apprisal to the " person charged " of the charge made against him and that the " legal evidence of the guilt " be laid before the magistrate within twenty days, if so allowed. The complaint and warrant fully apprised the prisoner of the charge, and the evidence fully supports it.

The commitment of the magistrate is based not merely on the complaint and warrant, but on the *legal evidence of the guilt* of the accused.

All the decisions in the books on the subject of what should be contained in the complaint *are prior in date* to the treaty with Spain, which, as we state, specifically provides for the case of extradition based on cablegrams. But *even they* go no further than that the accused shall be fairly given to understand what he is charged with ; thus the substance of the offence charged.

Re Heinrich, 5 Blatch, 8., 414.

Technical precision is not required. It is enough to make out a *prima facie* case. The party should be fairly apprised of the charge and with such fullness as is reasonably necessary to enable him to meet the investigation, but that appertains after jurisdiction is acquired, to the conduct of the proceeding.

Re MacDonnell, 11 Blatch., pp. 94, 97, 98.

An official statement of the charge by a Consul distinct enough to enable the accused to understand what is charged.

Re Farez, 7 Blatch., 347.
Re Herres, 33 Fed. Rep., 165.

The proceedings before a Magistrate in this District must be conducted according to the Laws of the State of New York.

Re Farez, 7 Blatch., 357.
Re Wadge, 15 Fed. Rep., 865.

The proceeding is not to be regarded in the nature of a final trial.

Benson *vs.* McMahon, 127 U. S. R., p. 463.
Judge Blatchford *re* Farez, 7 Blatch., 345.
Re Wadge, 15 Fed., 864.
Re Herres, 33 Fed. Rep., 165.

From a resumé of the evidence, we maintain it is clearly shown that Oteyza, being a public official, feloniously converted the Stub Book, Series F, with its coupons—all evidences of the Public Debt, and criminally obtained, by delivery to himself through Andrade, the sum of one hundred thousand dollars of the public moneys of Spain, that he criminally appropriated to his own use. The means used by Oteyza to obtain this large sum were by his criminally taking away the said Book of Redeemable

Bonds, Series "F," with coupons numbered 16,001 to 16,500, the property of the Government of Spain; detaching the coupons, the property of Spain; preparing lists of the same; signing such lists; obtaining the signatures of Maig, then Coupon Clerk and Prado, then Intendant; delivering the coupons to Andrade, and through the latter to Remus and Valdes to simulate innocent holders, with instructions to make three operations; causing the presenting of the lists and coupons to the Spanish Bank, Fiscal Agent of the Government; the second list being the warrant or order for payment and the collecting of the one hundred thousand dollars.

The receipts signed by Andrade and delivered to Oteyza, found on Oteyza when arrested here, which Andrade afterwards identifies, directly show the delivery by Oteyza to Andrade of $100,000 in coupons of the Redeemable Debt for the purpose of collection, the last named sum being shown to have been exactly the amount of the coupons 16,001 to 16,500, taken from the Book of Bonds, Series "F," and that were paid by the Spanish Bank from Government moneys on the lists already referred to.

On the evidence, Oteyza is guilty and would be committed by any Magistrate in the State of New York for either the crime

1st. Of embezzlement or criminal malversation of public funds (See Article I., p. 12 of Supplementary Convention with Spain; or

2d. Of embezzlement to the detriment of his employer or principal (See Article I., p. 13, *Idem*); or

3d. Of obtaining by false devices money (see Article II., p. 15, *Idem*); or

4th. Of larceny (See Article II., p. 16, *Idem*).

For each of these cases provision is made by the Penal Code of the State.

As to the Law of the State of New York.

The Supplementary Convention with Spain, under which the present case comes, went into effect April 19, 1883. The Penal Code of New York went into effect July 26, 1881, and hence governs as to this case.

1st. As to embezzlement the New York Penal Code includes embezzlement (Chapter IV.) obtaining property by false pretenses and felonious breach of trust under the single head of larceny.

Chapter IV., Sec. 528, N. Y. Penal Code; which reads as follows:

"Larceny, including embezzlement, obtaining money by false pretenses and felonious breach of trust."

"Sec. 528. A person who, with the intent to de-
"prive or defraud the true owner of his property,
"or of the use and benefit thereof, or to appro-
"priate the same to the use of the taker, or of any
"other person, either,

"(1.) Takes from the possession of the true
"owner, or of any other person; or obtains from
"such possession by color or aid of fraudulent or
"false representation or pretense, or of any false
"token or writing; or secretes, withholds, or ap-
"propriates to his own use, or that of any person
"other than the true owner, any money, personal
"property, thing in action, evidence of debt or
"contract, or article of value of any kind; or,

"(2.) Having in his possession, custody, or con-
"trol, as a bailee, servant, attorney, agent, clerk,
"trustee, or officer of any person, association, or
"corporation, *or as a public officer*, or as a person
"authorized by agreement, or by competent author-
"ity, to hold or take such possession, custody, or
"control, any money, property, evidence of debt
"or contract, article of value of any nature, or

"thing in action or possession, appropriates the "same to his own use, or that of any other person "other than the true owner or person entitled to "the benefit thereof;

"Steals such property, and is guilty of larceny."

What was formerly embezzlement and obtaining money under false pretenses has become larceny.

People *vs.* Dumar, 106 N. Y., 508.
People *vs.* Pollock, 51 Hun, 615.

And not only is embezzlement of private and public funds and property and criminal malversation of evidences of public debt and property, included in the felonious breach of trust in the provisions of Section 528 *ut supra*, but embezzlement and criminal malversation of the evidences of public debt and property in this State are punished under Section 470 *Idem;* and also under sections 472, 478 and 482 *Idem.*

"Misappropriation * * * * * * by public officers."

TITLE XIV.

"Of crimes against the revenue and property of "of the State."

"SECTION 470. Misappropriation, etc., and falsi- "fication of accounts by public officers.

"A public officer, or a deputy, or clerk of any "such officer, and any other person receiving money "on behalf of, or for account of the people of this "State * * * * appropriates to his own use "or to the use of any person not entitled thereto, "without authority of law, any money so received, "etc. * * * * * * * * * * * * * *

"SECTION 471. An officer or other person men- "tioned in the last section who wilfully disobeys "any provision of law regulating his official con- "duct. * * * * *

"SECTION 472. A county treasurer, who wilfully "misappropriates any moneys, funds or securities "received by or deposited with him as such treas- "urer, or who is guilty of any other malfeasance "or wilful neglect of duty in his office. * * *

"SECTION 478. Who conceals frauds on the rev- "enues of the State. * * * *

"SECTION 482. Who fraudulently conceals or ap- "propriates to his own use any lost treasure, or "any waived property belonging to this State." *

2d. As to embezzlement to the detriment of the employer or principal, this is found in Section 528, *Idem.*

3d. As to obtaining money by false devices, etc., (See Article II, p. 15 of Supplementary Convention with Spain), the provisions are found in Sections 528, 550, 552, 553, 554 and 560 Idem.

4th. As to larceny (See Article II. p. 16 Supplementary Convention with Spain) the provisions are found in Section 528, *Idem.*

The Counsel of the prisoner has urged in argument both before the Commissioner and the Court, that because the bonds of the book, series "F," and the coupons thereto attached, were unissued at the time of the occurrence charged, therefore, both the bonds and coupons were worthless, and were not public funds and not within the terms of the treaty. This is fallacious in every application. The taking and appropriating of the coupons was a criminal malversation of public funds, leaving out of question the bonds themselves.

It is admitted and the law shows the coupons were to bearer; the coupons were complete—even if unissued—as shown by their subsequent acceptance and payment by the Spanish Bank, and, by forgery and fraud, even the bonds could have been used by Oteyza to sell to innocent parties, if there lacked any names to the bonds. If we take Oteyza's argument and the *coupons* were unsigned in

the Stub Book, series F, and yet were found by the Spanish Bank to be in proper condition for payment and without palpable fraud, when presented with the schedules or lists, like prisoner's Exhibit T, the consequence would be that Oteyza must necessarily have himself *forged* any names lacking—if any were needed ! !

It is of public notoriety that governments, as well as private corporations, print or engrave the coupons of their securities in the name of the bearer with the name of the certifying officer thereon, and also that all Governments burn and destroy all paper evidences of Public Debt, when they intend to retire them, in order to prevent the using again wrongfully and criminally of such paper evidences as part of the public funds. Such also is the case in Cuba. At page 48 of Exhibit 3, Mr. Llera, successor to Oteyza, says that burnings of bonds are made with the intervention of all the Chiefs, and that the Notary of Finances draws the minutes, and that since the time Oteyza's predecessor turned over the office to Oteyza, no burning of bonds of the Board of Debt had taken place.

We now proceed with the discussion of the question of the coupons.

Section 536 of the N. Y. Penal Code provides as follows :

"SECTION 536. Completed unissued instruments "ptoperty. * * * All the provisions of this "chapter apply to cases where the property taken "is an instrument for the payment of money, an "evidence of debt, a public security, or a passage "ticket, completed and ready to be issued or de- "livered, although the same has never been issued "or delivered by the maker thereof to any person "as a purchaser or owner."

Where bank notes are complete in form, but not issued, it was held they were the property of the bank from which stolen ; they were of value and if put in circulation, though tortiously, could produce injury.

People *vs.* Wiley, 3 Hill, 194.

Notes of a country bank paid, but which could be reissued had a capability of being legally restored, that vested a special interest and property to the owner.

Leach's Crown Cases, Vol. 11, p. 1036; also
Rex *vs.* Vyse Ry. & Mood., Cr. Cases, 218.

The stealing of a certificate out of a certificate book—not signed and with blanks—held taking of property.

Regina *vs.* Thomas Morris, 9 Carr and Payne, 347.

Taking of an unendorsed bill of exchange—held the taking of property.

King *vs.* Chipchase, 2 Leach, 699.

The taking of an unendorsed draft of the State of New York by a simple custodian—held to be larceny.

People *vs.* Phelps, 49 How. Pr., 437.
72 N. Y., 334.

It is enough to prove the fraudulent conversion by a public officer of any money that comes into his possession or under his control by virtue of his office.

The Court ridiculed the idea that a public official (a Town Collector), could not be indicted for fraudulent conversion, because there was no actual taking away of the money from the town and said when "*by virtue of his office*" he got the money, *that* was enough.

State *vs.* Walton, 62 Me., 106;
See also 31 Cal., 109;
And Bernhard *vs.* Bowe, last number Fed. Rep.

Negotiable bonds of a municipal corporation, although unissued, are property. The prisoner was Treasurer of the city of Buffalo, had in his custody bonds of the city and put them in the hands of a broker with directions to sell and credit the proceeds to a firm of which prisoner was a member. Held to be a conversion of the bonds.

Bork *vs.* The People, &c., 91 N. Y., p. 5.

The taking of bank bills redeemed by the bank, and in the hands of its agent, held to be the taking of property of the bank.

Commonwealth *vs.* Pond, 7 Met., 475.

The unissued bonds, or bonds not even prepared are a part of the public property and public funds, the issue of which can be enjoined.

Ayres *et al. vs.* Lawrence, 59 N. Y., 192.

The coupons 16,001 to 16,500 were the property of the Spanish government and that they were of the public property and evidences of public debt, and in such a state that when issued and delivered they would be paid, when accompanied by the usual lists, is shown conclusively by what happened in this case, for when they were taken from Stub Book Series "F" and with the lists signed by Oteyza, Maig and Prado and delivered by Oteyza to Andrade, and by him and the sub-agents Remus and Valdes presented to the Fiscal Agent of the government—the Spanish Bank—they were examined at the bank and found correct and their face value—the $100,000—was paid to Andrade, Remus and Valdes and the amount then delivered by Andrade to Oteyza, *who has the money.*

Suppose the case of United States bills received by the Government at its Custom House in New York in payment of duties at the time of an outstanding order in the Custom House for the with-

drawal, destruction or burning of the same class of bills with the numbers 1 to 10,000, and that among the bills so received for customs were some of such numbering, and that the official in the Custom House having custody of such bills appropriates and misuses some of these bills by sending them with orders to the sub-treasury to exchange them for gold or silver coin, or through agents selected by himself, by again paying other customs duties; or

Suppose the case of United States Bonds, with coupons attached, in the Treasury Department, the coupons already engraved with the name of the proper officer, but the bonds unsigned, awaiting signature, or partial signature, or possibly destruction by fire or otherwise, with the proper formalities, and the official having custody of these bonds and coupons detaches the coupons due and, through agents, sends the due coupons to the Sub-Treasury, or sells them, and collects and appropriates the face value; in all these cases, and whether the issuing sovereignty were the United States or the State of New York, the crime would be embezzlement or criminal malversation of public funds, and punishable under the laws of each Sovereignty.

See New York Law and Decisions, *ut supra*, and United States Statutes on Embezzlement, as follows:

SECTION 5453. Every person who, without authority from the United States, secretes, embezzles or takes and carries away any paper, parchment or any other material prepared or intended to be used in the making of (U. S. Bonds or Obligations, &c.), or who without such authority so secretes, embezzles or takes and carries away any paper, parchment or other material, &c., intended to be prepared, issued or put in circulation on behalf of the United States as one of its papers, instruments or obligations, &c., whether intended to issue or put

the same in circulation or not shall be punished, &c.

SECTION 5488.—Every disbursing officer of the United States who deposits any public money entrusted to him in any place, or in any manner, except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, or for any purpose not prescribed by law, withdraws from the Treasurer or any Assistant Treasurer or any authorized depositary, or for any purpose not prescribed by law transfers, or applies any portion of the public money entrusted to him, is in every such act, deemed guilty of an embezzlement of the money so deposited, loaned, withdrawn, transferred or applied.

SECTION 5389.—Failure by treasurer or depositary to safely keep U. S. moneys is embezzlement.

SECTION 5490.—Failure by other officers or persons chargeable to safe keep public moneys is embezzlement.

SECTION 5391.—Retention by U. S. officers or agents of money and failure to account is embezzlement.

SECTION 5493.—The foregoing provisions construed to apply to all persons charged with the safe keeping, transfer or disbursement of public money.

The distinction between embezzlement or criminal malversation of public funds or property on the part of a public officer and larceny or embezzlement of a private individual, consists in the fact that a public officer is in a sense a part of the Government himself, and therefore a class of asportation of which the private individual could be guilty, might not be said of the public officer in certain cases, and that as to the public officer he would obtain the property appropriated *by virtue of his office.*

State *vs.* Walton, 62 Me., 106.

Rex *vs.* Barrett, 6 Carr, P., 124.
5 Watts, 538.
3 Strob, 144.
State *vs.* Causler, 75 N. C., 442.
State *vs.* Long, 76 *Id.*, 254.
10 Mod., 288–290.
Fortenbery *vs.* State, 56 Miss., 286.
State *vs.* Goss, 69 Me., 22.

The claim of Oteyza before the Commissioner, that even if he did what the evidence shows, yet that it was not done *de jure* because of the State of the Bonds and Coupons of Book Series "F," is similar to the defences of various of the defendants in the cases last cited, which were overruled.

Oteyza received and receipted for this Book Series "F," its bonds and coupons, as the property of the Spanish Government. He is estopped from denying that they were a part of the public property and funds, nor can he claim that he did not, as Secretary and Comptroller of the Public Debt, issue the coupons, and set up that he only acted as an individual.

(See cases last cited.)

Oteyza's contention is that a public official could not commit the offence of embezzlement and criminal malversation of public funds, when he validated and issued the coupons and obtained the money on them, because of the State of the Book Series "F," which he says, forsooth, were not of the public funds. Then he was guilty of a compound offence:

1st. Of falsifying documents; and

2d. Of obtaining and appropriating the $100,000.

The moment Oteyza delivered the coupons already prepared for issue to Andrade with the lists, the second list being the warrant or order on the fiscal agent—the Spanish Bank—they became cash. Before this act the coupons were evidences of cash, a

part of the public funds ready for delivery, only needing certain official acts as to issuance and delivery. Oteyza, with the aid of Maig and Prado, executed these acts as to the coupons, and he did this by virtue of his office as Secretary and Comptroller of the Public Debt, and the coupons and lists being presented, were paid with the public funds.

There is no distinction between the coupons and the money obtained on them, for they were public funds, either in the form of paper evidences, or in the form of money when they were collected, and the coupons when paid would have to be returned by the fiscal agent as proof of the payment of the public funds. As stated, Oteyza stole 1st, the coupons, and 2d the $100,000.

The intent and the act of Oteyza was to make the "embezzlement or malversation of the public funds" by collecting the coupons, after stealing them.

If Oteyza had become frightened and brought the coupons to New York and sold them *since the coupons are payable to the bearer*, the Spanish Government would have been liable and Oteyza could have been indicted here for the same reasons as set forth hereinabove.

But the coupons in this case numbered 16,001 to 16,500 did not go out to the pulic at all—they did not leave the offices of the Government, except to be presented by the simulated innocent brokers and holders—the agents of Oteyza—Andrade, Remus and Valdes, and the money paid did not come from the public—from any private individual, firm or corporation, but in fact and in law from the coffers of the Government itself, out of its public funds, through its fiscal agent the Spanish Bank (so found to be the fact by the Commissioner), and which is clearly shown by Exh. 3, pp. 1 and 98; also by Exh. T 1 of the prisoner, hereinafter following:

PUBLIC DEBT OF THE ISLAND OF CUBA.

Redeemable at 1 % with 3 % of Tax.

Coupon due the 1st of , *18* .

Invoice No. .

Statement of.... .....coupons of said debt, which, with invoice numbered as above, are to-day presented, in order that the same may be paid by the Spanish Bank of the Island of Cuba.

Coupons.	Number of the Bonds to which said Coupons Correspond.	Series.	Value of Coupons.	Total. $ c.

TOTAL.

Havana, day of , 18 .

(Signature of holder).

....

CONTROLLER'S OFFICE OF THE PUBLIC DEBT OF THE ISLAND OF CUBA.

Number..... .....

The coupons specified herein, which amount to a total of , have been presented on the date of this invoice, have been cancelled by the office of the Secretary-Controller, in the presence of the holder, and will be paid by the Spanish Bank of the Island of Cuba by virtue of the order placed upon this invoice, upon presentation thereof to the cashier of said bank, together with the said coupons, whereon there shall be

stamped *Paid* on the backs thereof, without which requisite they shall not be charged to the accounts of said bank.

Havana, the day of , 18 .

The Secretary-Controller Chief of the Bureau .....

Let payment be made to bearer, upon presentation of this invoice and of the coupons therein specified.

Received. The Intendant-General of Finance.

Signature of holder:

....

....

SPANISH BANK OF THE ISLAND OF CUBA.

Section of the Public Debt.

Number Payment of Coupons: Four months from 18 to

The coupons above specified, amounting in all to , have this day been paid, and remain deposited in the safe of this bank.

Vised— Havana, day of , 18 .

The Governor,

Noted—

.... The Controller,

....

For the reasons given it is respectfully submitted that on the evidence presented, any committing Magistrate in the State of New York would find a complete case on which to commit the prisoner for trial.

II.

Passing to the question whether the evidence before the Commissioner shows Oteyza guilty under the Laws of Spain of "Embezzlement and Criminal Malversation of Public Funds" in such manner as be extraditable under the present treaty with Spain and the supplementary convention, we respectfully maintain and protest that the powers both of the Commissioner and Court in that regard are of a limited character, and that, unless it be most clearly shown by the laws and decisions of the tribunals of the demanding Government that the prisoner whose extradition is demanded, can not be committed for trial on the evidence adduced before the Commissioner for one of the crimes, provided by the treaty with the demanding Government, his duty is, after finding that such evidence would justify the prisoner's "apprehension and "commitment for trial if the crime or offence had "been" committed in the State, to forwith so certify.

The place where the crime was committed is the place to try him. Nothing is required to warrant extradition except that there be sufficient evidence of the fact of the crime, and to show enough to hold him for trial. *A contrary view would destroy the object of such treaties.*

Judge Blatchford *re* Farez, 7 Blatch, 345.
Benson *vs.* McMahon, 127 U. S., 463.
Re Wayne, 15 Fed. Rep., 864.
Re Herres, 33 Fed. Rep., 165.

The Spanish officials and the Judges of the Criminal Court of Cuba, that has now pending before it the case of Oteyza, explicitly declare the acts of Oteyza to be Embezzlement and Criminal Malversation of Public Funds, and the direct characterizing of the crime of Oteyza as such under Article 401 of the Penal Code of Cuba by the three Judges

of the full Court, by the District Attorney in his application to the Court for the extradition of Oteyza and the order of the Court endorsing the application and directing the proper steps to be taken, is of an authoritative character as defining, interpreting and applying the law, and since the Counsel for the prisoner has not cited a single decision of any Court or tribunal to the contrary, should be accepted by the Court as final in that regard. The mere taking away of Stub Book series "F," with its bonds and coupons was a crime under Article 401. See *infra*, Article 401 and its translation; also report of De Haro page 14 of Exhibit 3, who says: "This fact alone constitutes a crime punishable under the Code of Criminal Procedure.

(Exh. 3, p. 18.) The District Attorney says it is perfectly proven that there is a *malversation of public funds* in the amount of $100,000, punished by Section 4 of Article 401 of the Penal Code.

(Exh. 3, p. 23.) The Criminal Court of three Judges says the acts denounced by the District Attorney have all the characteristics of *malversation of public funds* * * * * specified in Article 401 of the Penal Code.

(Exh. 3, p. 53.) The investigating Magistrate says there being grounds to believe Oteyza responsible for the crime of *malversation*—punished under Section 4 of Article 401.

(Exh. 3, p. 54.) The District Attorney says:

Oteyza has been declared responsible for *malversation of public funds*, and applies for his extradition, since, according to the supplementary agreement between Spain and the United States, the Government of the United States is bound to deliver to Spain parties accused or convicted, among other crimes, of the taking away or criminal *malversation of public funds*, committed within the jurisdiction of Spain by public employees, as set forth in Section 13 of Article 2.

If we examine the Spanish Original Exhibit 3, it

will be seen that the District Attorney, on lines 3, 4, 5, 6, 7 of page 64 uses the very Spanish words of the supplementary convention thus :

The District Attorney Spanish Exhibit No. 3, page 64, lines 1, 2, 3, 4, 5, 6, 7.	The Treaty--paragraph 12 of Article II, as amended by supplementary convention.
Individuos acusados ó convictos entre otros delitos de Sustraccion ó malversacion criminal de fondos publicos cometida dentro de la jurisdiccion (de Espana) por empleados ó depositarios.	La sustraccion ó malversacion de fondos públicos cometida dentro de la jurisdiccion de una ú otra parte por empleados públicos o depositarios.

And of this we find the treaty English, which must be governing, to be

"The embezzlement or criminal malversation of public funds committed within the jurisdiction of the other party by public officers or depositaries."

(See also pages 55 and 56 of Exhibit 3.)

Where the Criminal Court makes its order stating that the provisional imprisonment of Oteyza has been ordered for *malversation of public funds;* that all the requirements specified in the treaty between Spain and the United States have been complied with, and that the crime for which Oteyza is prosecuted is punished under Section 4 of Article 401; therefore the extradition proceedings *should be* applied for.

We insist that with reference to the Article 401 of the Penal Code of Cuba (which we will now quote, including Section 4), in view of the fact that

it stands admitted by the prisoner that there is no Common Law in Cuba ; and in view of the fact that no law and no decision of any Court in Cuba has been shown to prove to the Court that the District Attorney, the full Criminal Court of the three Judges and the Investigating Magistrate, are all in error in designating the acts of Oteyza as constituting the crime specified in Article 401 of the Penal Code of Cuba, and as an extraditable crime under the treaty between Spain and the United States, all that could be required of the demanding government in this case for the surrender of Oteyza has been fully complied with in every respect ; and that it would be the assumption by the Commissioner, and by our Court, of a power and authority never contemplated, and the initiation of an unheard of practice in extradition, if, in the absence of such laws or decisions of the Courts of the demanding government, and in the actual presence of decisions and interpretations of such Courts and its officers already cited, the Commissioner or the Court should pass from the domain of fact that includes the law and decisions present before him in the evidence, and sit in judgment, as on a trial, upon the guilt of the prisoner under such law to pronounce him guilty or declare him innocent.

And yet, such is what the prisoner coolly asked the Commisssioner and now asks the Court to do !

Here in this case there is no question raised by the prisoner as to the Common Law definition of embezzlement or criminal malversation, as there was to the Common Law definition of forgery in the Benson case (127 U. S. Rep., pp. 465 and 466) and in the Windsor case, cited in behalf of Tully (see Spear on the Law of Extradition, pp. 271 and 275), for in this case we have the Statute Law of Article 401 of the Penal Code of Cuba and its interpretation and application to the acts of Oteyza by the Court of Cuba and its officers.

Judge Brown in the Tully case said: "It is immaterial what my own judgment might be, whether as an original question the case of Windsor or that of Tully constitutes forgery at Common Law, so long as the point has been *adjudicated* (in the Winsor case) to the contrary in England, in whose behalf the extradition is here sought" These words clearly show that only because there was an adjudication of the Court of England, cited to him, did the Judge pass on the applicability of the foreign law.

But Oteyza has not been able to cite a single adjudication of the Courts of Spain that these acts charged against him do not constitute the crime of of Article 401 of the Penal Code of Cuba, as defined by the Criminal Court there and its officers.

In the Benson case, 127 U. S. Rep., the defense was made that the treaty meaning of forgery under the Mexican treaty should be ascertained according to the Common Law of England.

Now it will be noticed that in the Benson case there was no stipulation to the fact, nor any evidence that there is no Common Law in Mexico. If such stipulation had been made or evidence adduced, the Court would not have gone into the discussion of the point of the defense as to the Common Law. And the Court said that from the use of the Spanish word "falsificacion" used in the Spanish draft of the treaty as the equivalent of forgery, it did not appear from this that the Mexican authorities intended to be bound in the treaty by any restricted use of the word "forgery," when the question concerned an offence of that character committed in Mexico. "It is for an offence against Mexican law that the prisoner is held to answer."

Taking up the use of the pertinent words of the Spanish text of the treaty with Spain that are side by side with those of the English text, we have the following definitions:

ENGLISH.	SPANISH.
Paragraph 12. Article II, as amended.	Same.
The embezzlement or criminal malversation of public funds.	La sustraccion ó malversacion criminal de fondos públicos.
Paragraph 13. Article II, as modified.	Same.
Embezzlement.	Malversacion de caudales.
In continuation and as forming part of Article II.	Same.
15. Obtaining by threats of injury or false devices.	Obtenor por medio de amenazas de daño ó por medio de falsos artificios.
Money, valuables or other personal property, and the purchase of the same.	Dinero, valores ú otra propriedad personal, asi como la compra de estos mismos efectos.
With the knowledge that they have been so obtained when the crime, &c.	Con conocimiento de como han sido obtenidos.
* * * * *	
16. Larceny defined to be "*theft* of effects," "personal property" or "money."	Hurto, entendiendose por tal "la sustraccion de efectos" "bienes muebles ó "dinero."
* * * * *	* * * * *

RESUMÉ OF TREATY TERMS.

(ART. II., 12, 16.) We find embezzlement defined to be "sustraccion."

And larceny defined to be theft that is "sustraccion."

Criminal malversation to be "malversacion criminal."

Embezzlement to be "malversacion de caudales."

Money, valuables or other personal property to be "efectos."

We further find that the District Attorney at page 63 of the Spanish original of Exhibit 3 of the demanding Government at lines 20, 21, 22, 23, 24, says that the imprisonment of Oteyza has been ordered as the principal responsible, criminally, of the crime of "malversacion de caudales ó fondos publicos," and we refer to Article 401 of the Penal Code, here copying the Spanish and giving its translation into English.

CAPITULO X.

Malversacion de caudales públicos.

ART. 401. El empleado público que por razon de sus funciones, teniendo á su cargo caudales ó efectos públicos, los sustrajere ó consintiere que otros los sustraigan, será castigado:

1o.: * * * *

2o.: * * * *

3o.: * * * *

4o.: Con la (pena) de cadena temporal si excediere de 125,000 pesetas.

As to the translation:

We find the verb "sustraer," in different forms, used twice in Art. 401.

See words "sustrajere"—subjunctive, present, singular.

"sustraigan"—subjunctive, present, plural,

and from this, the word "sustraccion," the treaty term, a noun derived from the same verb.

The Dictionary of the Spanish Royal Academy gives among other definitions the following:

"Sustraer"—

"Sustraccion"—the act of usurping that which belongs to another.

The same Dictionary defines:

"Caudal" (plural "caudales")—Hacienda; property of any kind; plenty of money; capital.

and "Hacienda"—land cultivated; rents; farms; money, or "caudales;" property personal and real, etc., etc.

and "Bienes"—synonymous with last definition. See also "Lopez"—Bensley Span. Eng. Dictionary.

The same Dictionary defines:

"Efectos públicos—The evidences of the obligations and debt of a Government and of the loans contracted by the Government.

The same Dictionary defines:

"Malversacion"—The act or operation of malversating; the wrongful employing, using, applying of "caudales" or "bienes" as above, *i. e.* property of any kind soever.

The same Dictionary defines:

"Malversar"——To employ (use or apply) funds or "caudales" (as above) *i. e.*, property of any kind, in charge of a person in uses distinct from those for which the same are destined.

Applying these various definitions cited above, we proceed to translate Article 401 from the Spanish into English.

CHAPTER X.

Of the wrongful use of public property.

ART. 401. Such public official who, by virtue of his office, having in his charge *property* or *evidences of public debt*, shall appropriate the same to his own use or permit others to appropriate the same to their use, shall be punished:

1st: * * * * Provides for cases where the sum shall be up to and not exceed 125 pesetas.

2nd: * * * * Provides for cases where the sum shall be 125 pesetas and not exceed 6,250 pesetas.

3rd: * * * * Provides for cases where the sum shall be 6,250 and not exceed 125,000 pesetas.

4th: By the wearing of a chain for a time, if the amount exceed 125,000 pesetas.

The peseta is equal to twenty cents in United States currency.

And it will be noted that in the evidence before the Commissioner, the Criminal Court in Cuba and its officers have drastically defined the acts of Oteyza as coming under the provisions of this Article 401, and of Paragraph 12 of Article II of the treaty, as amended. The word "caudales," the generic term used in Article 401, is meant to cover broadly every species of Government property, and is used in subsequent articles of the same Chapter X that includes Article 401, side by side with "efectos publicos," and they show the intention to cover all classes of *property onward* from that where its value is up to and does not exceed $25 (125 pesetas). See subdivision 1, of Article 401.

By way of passing reference we may here state that the Penal Code will be found to contain pro-

visions as to the crimes above cited by us, which we give in tabular form as follows:

Treaty. (As amended.)		Penal Code of Cuba.
		.....
Art. II., Par. 12;	is found in	Art. 401;
Art. II., Par. 13;	" "	Art. 559;
Art. II., Par. 15;	" "	Art. 520 and 559;
Art. II., Par. 16;	" "	Art. 535.

III.

Before closing, although, in fact, it seems hardly credible that, in the face of the declaration by the Criminal Court in Cuba, that it had jurisdiction in the premises under the Organic Law of the judicial power (Prado, the accomplice of Oteyza in the crime, raised the point of jurisdiction), the learned Court will take up and consider the point urged by the prisoner, that the Criminal Court had no jurisdiction as to his crime, because "administrative proceedings" had not been taken and terminated—still, to leave nothing unanswered, we point to the Exhibit Number 3, up to page 15, and the Court will easily see that the officer appointed to carry on these very "administrative proceedings"—which are in the nature of an investigation by one of the special agents of the United States Treasury Department, or of an investigation by a grand jury had brought his investigation to such a point, and that, too, after notice to Oteyza of their purport, that he makes his report to his superior officer, stating that there has been proven a crime punishable under the Criminal Code of which the Courts should take cognizance—in other words, that there is a *prima facie* case, and, under the orders of his superior, he sent the proceedings to the District-Attorney.

The counsel for the prisoner produced neither law nor decision to prove that the "administrative proceedings" should continue indefinitely, or that the prisoner now should be therein present at any stage, and Oteyza having been informed at the very threshold, quietly stole away from his post, without leave, without accounting for or delivering over the government securities, abandoning his office and becoming amenable to the provisions of Article 383 of the Penal Code of Cuba, for so doing.

But the learned counsel for the prisoner holds aloft in his hands a paper and cries aloud "A Royal Order!" "A Royal Order!" until the very welkin rings and he and the prisoner believe it, mayhap, a Royal reprieve—is at hand! Unfortunately for them the Royal order in question (of September 2d, 1881, Prisoner's Exhibit N), and we may remark that this Royal order is really only an executive decree through the ministry—without power against the law. Article 18, of the very Constitution of Spain—76, as shown by the Prisoner's Exhibit C, provides that to the tribunals and courts belong exclusively the power to enforce the law in civil and criminal matters—and the organic law, Art. 4, paragraph 3, provides that the criminal Courts shall take cognizance of crimes committed by "the administrative native authorities" within their respective territories. We say this order Exhibit N, only provides that is was necessary in the case to which it referred to make a preliminary investigation, *and that had not been done.*

The subsequent Royal order of February 22, 1882, Exhibit No. 29, of the demanding Government, explains the real and true construction to be placed on that of September 2d, 1881, and explicitly says that it could not be meant that the order of September 2d, 1881, was intended to deprive the Courts of their usual functions.

But the Organic Law which it is admitted was passed after the Royal order of September 2d, 1881, Prisoner's Exhibit N, gave jurisdiction to the

Courts even if it had not been abrogated by the Royal order of February 22d, 1882, see *supra* Exhibit No. 29.

A Royal order is not a legislative provision. From it an appeal can be made to the Council of State and it is merely ministerial and purely of an Executive character.

IV.

All the specious arguments of the counsel for the prisoner and the exhibits and the statement of the prisoner as to the law for the settlement of the public debt of Cuba, the regulations of the general and central offices of finance, and the definition of the Commercial Code, the Constitution, the condition of Bond Book Series "F"—all cannot hide the naked facts that, withal, Oteyza, by virtue of his office, stole—1st, the book and its coupons; and then, 2d, the one hundred thousand dollars in cash of the public funds of the Spanish Government, and used coupons 16,001 to 16,500 of the bonds of the Redeemable Debt, and the lists accompanying the same, as the procuring means; and still has the Bond Book Series "F" with Bonds 16,001 to 16,500 (with the criminal malversation of which bonds and coupons and public funds Oteyza is specifically and clearly charged in the complaint and warrant here and in the proceedings against him in the Criminal Court in Cuba (see Exhibit 3), and these matters foreign to the gist of the criminal charge; this blinding detail of administrative proceedings is dangled before his eyes, introduced and dwelt upon in the hope of leading the Commissioner and the Court into the labyrinthian mazes of confusion and the perplexities of error and mistake.

V.

In the case of Barrachina, in which the opinion of Judge Wallace was filed in *habeas corpus* proceedings, October 5th, 1885, and which was a case under the treaty with Spain, Judge Wallace says: "The warrant of arrest and the depositions upon which the warrant may have been issued, copies of which are to be produced when a fugitive is charged with crime, but is not under sentence or conviction, according to Article XI of the Convention between Spain and the United States for extradition, are such a warrant and such depositions as are known to the practice of the Criminal Courts of Spain.

The warrant of detention ordered by the Court of First Instance of Cartagena is a warrant of arrest within

rest within the meaning of that Article, and the statements of the several witnesses produced before the Court or out of Court, in the course of criminal proceedings or investigation against the accused, are depositions within the meaning of that article. The Commissioner was not called upon to consider whether the warrant ordered by the Spanish Criminal Court was a sufficient warrant of arrest in all the details of time, place and circumstances required by the rules of the Common Law."

VI.

The matters set out in Points I, II and III, of the brief of counsel for the prisoner, are sufficiently treated of in the foregoing points to need no special mention. As to his Point IV, the Commissioner *did not*, as Counsel states, say the prisoner, should produce the *coupons* in Court. What he did say was only in reference to the *Bonds* in Stub

Book, Series F, which was receipted for by the prisoner, and which he is charged with having stolen. (See op. Com'r and Exh. 3.)

The *coupons* and schedules or lists are in the Cuban Criminal Court, and the witnesses were examined with them before the Court. It was not necessary to bring them here. The judicial authorities here are bound to give to the depositions the same effect as if the witnesses themselves were personally present and testifying.

Re Farez, 7 Blatch. 345.

As to Point V, the prisoner's Exhibit 13 shows the bonds and coupons were to bearer; his Exhibit T shows the Spanish Bank was the disbursing agent of the Government, from whom, by the testimony of the witness Andrade, Oteyza collected the $100,000 for the coupons stolen out of Stub Book, Series F. It is simply nonsensical to say the bank would have paid the coupons, if on their face they were defective. If there were forged names or other defects in the coupons, so much the worse for Oteyza. He took them out of their Stub Book, and he alone is responsible for each additional detail of crime!

As to Point VI, in view of the Benson case (*ut supra*), and of the Tully case (Spear on Extradition, p. 272 *et seq.*), in which our Courts reverted to the law and decisions of the respective demanding Governments, the Commissioner in this case had good authority for his action in citing the Cuban Courts. Besides, Prado, one of the arrested parties, had raised the question of jurisdiction in the proceedings.

In this Point VI, the counsel for the prisoner rises to the dizzy heights of sublimity when he says (page 32), "it is so evident that the real crime committed is not embezzlement, but the abstraction "of public papers and conspiracy to defraud," asks why Oteyza was not accused of two other crimes, and then citing two articles of the Spanish Code,

one of which (Art. 371) Mr. de Haro refers to in the administrative proceedings (see page 14 of Exhibit 3 of demanding Government), when he says: "This fact (of abstraction of Stub Book Series F), by itself alone constitutes a crime, &c.," and the other (Art. 407) relates to cases where outsiders have business contracts with the government, and its employees conspire with them, which is not the case at bar. What *is* evident from the evidence is not only the abstraction of Stub Book Series F and the coupons, but the presentation of the coupons by and payment of the $100,000 to Oteyza, and Oteyza is charged with this in the complaints and in the evidence in Exhibit 3. If this be not criminal malversation of public funds, the Spanish Penal Code and its Article 401, the treaty with Spain, the New York Code, the decisions of this country, the Judges of the Court before which Oteyza's case in Cuba is pending, and the statements in the depositions of the witnesses there taken are all wrong, and Oteyza stands forth an innocent Angel, "pure and simple," as the French would put it.

As to Point VII., pages 34 to 41, the mention we have already made as to the Benson and Tully cases and as to the Royal Orders, and the philological explanation of Article 401, *ut supra*, refute its contentions.

As to Point IX., page 41, the counsel for the prisoner reaches the summit in contending that he has a right to introduce *ex parte* depositions for the defense.

As stated, the Commissioner in Extradition in this case sat as a committing Magistrate of the State of New York, and we find when the case of the prosecution is closed, the defendant is informed of his right to make a statement (§ 196, N. Y. Code Crim. Proc.), which is taken and reduced to writing, §§ 198, 199, 200. Thereafter defendant's witnesses, if he produce any, *must be sworn and examined*, § 201, *Idem*. Testimony must be taken *by question*

and answer, unless waived. If questions put be objected to, &c., § 204, *Idem.*

The statutes cited by Counsel for the prisoner, including the Act of August 3, 1882, relate only to the depositions, warrants and other papers that are *evidence of the criminality* of the person charged, and do not apply to depositions or papers produced by the prisoner himself.

Since the Act of 1882, the law has been defined *in re* Wadge, 15 Fed. Rep., 865, where Judge Brown says:

"According to the practice here, before committing Magistrates (2 Rev. St. N. Y., 708, §§ 13–20, N. Y. Crim. Code, §§ 188–221. *In re* Farez, 7 Blatch., 345, 347), while it is the duty of the Magistrate, before whom extradition proceedings are pending, to take such evidence as may be offered on the part of the accused, and to allow him reasonable time for that purpose, it seems to me clear that this cannot embrace, &c.

* * * * * *

"Nor is there any warrant, so far as I am aware, according to the law or the practice before committing Magistrates in this State, for receiving testimony by commission or by *the depositions of foreign witnesses taken abroad;* all the provisions of the law and statutes, as above cited, *contemplate the production of the defendant's witnesses* in person before the Magistrate, for examination by him.

"The phrase in Section 3 of the Act of August 3, 1882, 'that he' (the accused) 'cannot safely go to *trial* without them' (witnesses) cannot be construed as giving a right to a full trial in violation of treaty stipulations; but it must be confined to such a preliminary hearing only as was already allowable under the existing practice, viz., such as is appropriate to a hearing having reference only to a commitment for future trial."

The words "similar purposes" which counsel for the prisoner wishes to have read "for purposes

of defense" do not mean that. What they do mean is fully set forth by Judge Brown.

"The term 'similar purposes' must receive the "same construction in the last named Act (Act of "August 3, 1882. 22 U. S., Stat. at Large, 215), as in "prior acts. By its context it naturally refers to "the words in the previous line 'for all the pur- "'poses of such hearing,' that is to proof of crim- "inality, which is the purpose of the hearing. "The same construction has been given to similar "words in prior statutes."

In re McPhunn 30 Fed. Rep., 57.

VII.

The commitment of the Commissioner was not only on the complaint and warrant but on the evidence of criminality, including the complaint, warrant of arrest and depositions from Cuba.

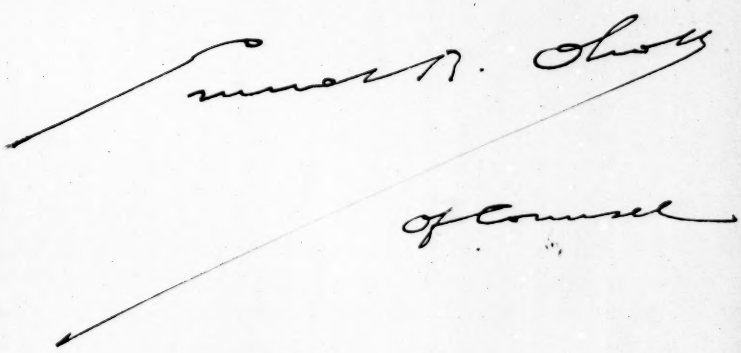
The Judges in recent cases of habeas corpus in extradition now follow the old rule. They will inquire whether the Commissioner has acquired jurisdiction of the matter by conforming to the treaty and statute; whether he has exceeded his jurisdiction and whether he had legal and competent evidence before him. But they will not discharge the prisoner if there was legal and competent evidence of facts before the Commissioner for him to consider in making up his decision as to criminality nor because there was an error committed by the Commissioner in the reception of evidence.

Re Stupp, 12 Blatch., 501.
Re Farez, 7 Id., 34.
Re McDonnell, 11 Id., 170.
Re Stupp. Id., 124.
Ex parte Geisseer, 4 Fed. Rep., 188.
Re Doig, Id., 193.
Re Fowler, Id., 303.
Re Weigand, 14 Blatch., 370.
Re Vandervelpen, 14 Id., 137.
Re Wahl, 15 Id., 334.

VIII.

The demanding Government has complied with all the requirements of the treaty, of the law and of the statutes, and the prisoner should be remanded to the custody of the marshal that the proceedings for his extradition may be continued.

OLCOTT, MESTRE & GONZALEZ,
Of Counsel for the
Kingdom of Spain.



In the Supreme Court of the United States.

OCTOBER TERM, 1869.

LUIS DE OTEYZA Y CORTES,
Appellant,
vs.
JOHN W. JACOBUS, etc., and anc.,
Appellees.
} No.

ON APPEAL FROM THE ORDER OF THE HON. E. HENRY LACOMBE, JUDGE OF THE U. S. CIRCUIT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK, DISCHARGING A WRIT OF HABEAS CORPUS, AND REMANDING APPELLANT TO THE CUSTODY OF THE MARSHAL OF SAID DISTRICT.

1

In the Supreme Court of the United States.

OCTOBER TERM, 1889.

LUIS DE OTEYZA y CORTEZ,
Appellant,

vs.

No.

JOHN W. JACOBUS, etc., and another,
Appellees.

2

On Appeal from the order of the Hon. E. Henry Lacombe, Judge of the U. S. Circuit Court for the Southern District of New York, discharging a writ of Habeas Corpus and remanding Appellant to the custody of the Marshal of said District.

Motion to Advance.

And now, May 5th, 1890, comes Emmet R. Olcott, of Counsel for the Appellees, including Miguel Suarez Gudnes, Consul-General of the Kingdom of Spain, and respectfully moves the Court to advance the 3
above entitled case upon the docket, and to hear the same orally during the current term, for the reason that the interest of the Government of the Kingdom of Spain in a speedy hearing and determination of the case is pressing.

4 In support of this, the following facts are presented:

The appellant was arrested January 2, 1890, by the United States Marshal in the Southern District of New York, under the warrant of Commissioner Samuel H. Lyman, upon a complaint under the provisions of the treaty between Spain and the United States, made by the appellee, Suarez, as Consul General of Spain, charging the prisoner with criminal malversation of public funds of Spain, at Havana, in the Island of Cuba, and legal evidence of the guilt of the prisoner was adduced, showing criminal malversation at Havana, Cuba, to the extent of $100,000 in coupons, converted into a like sum in cash, and of bonds of the nominal
5 par value of $500,000.

The Commissioner committed the prisoner, and the latter thereupon obtained a writ of habeas corpus from the Hon. E. Henry Lacombe, one of the Judges of the Circuit Court of the United States for the Southern District of New York, who, after argument, discharged the writ and remanded the prisoner April 18, 1890.

The proceedings against Oteiza are pending in the Courts in the Island of Cuba, where the crimes were committed, and, as it is shown, various parties aided and abetted the prisoner, and took part in the commission of the embezzlement or criminal malversation of public funds, with which he is charged, and some of them are under arrest in Cuba awaiting trial, and
6 various witnesses connected with the said crimes are in confinement in jail awaiting the trial of Oteiza and said other parties, and the trials of all said participants, and the duration of the confinement of said witnesses, are awaiting the result of the demand for the surrender of Oteiza; and, besides, the further investigations into the facts connected with said crimes is also thereby delayed—all of which, by reason of the appeal herein re-

ferred to, being deferred until October next, will cause manifest loss, injury and damage, and obstruct and impede speedy justice in the Island of Cuba, to the great detriment of the demanding government, and material and necessary witnesses may disappear or die meanwhile, and the chances of the recovery of said bonds are lessened by each day's delay. 7

In view of the statements in behalf of the Government of Spain, and in accordance with the spirit of national comity existing between that country and the United States, evidenced in the Treaty of Extradition between the two countries, and the fact that delay in the case of the prisoner here retains others in confinement, witnesses and prisoners, as well as himself, this Court should be pleased to direct that the Appeal be advanced on the calendar of the Courts, and immediate argument be had. 8

By permission of the Solicitor-General the official communication to him of the Honorable Secretary of State of May 2d instant is appended, together with the affidavits of Mr. Suarez, Consul-General of Spain, and of Mr. Olcott, and of the notice of this motion to advance.

Respectfully submitted.

EMMET R. OLCOTT,
Of Counsel for the Demanding Government,
the Kingdom of Spain.

9

APPENDIX.

13

IN THE

SUPREME COURT OF THE UNITED STATES.

LUIS DE OTEYZA Y CORTEZ,
Appellant,

vs.

JOHN W. JACOBUS, etc., and another.

14

Please take notice that on the papers and proceedings herein, and on the annexed affidavit of Miguel Suarez Guañes, Consul General of the Kingdom of Spain, at the City of New York, verified May 3, 1890, a motion will be made to the Supreme Court of the United States, at the Capitol, in the City of Washington, District of Columbia, at the opening of the Court, on the 5th day of May instant, for an order to advance the above entitled matter on the calendar of the Court and for an immediate argument.

Dated New York, May 3, 1890.

Yours, &c.,

OLCOTT, MESTRE & GONZALEZ,
Attorneys for Appellees,
35 Broadway,
New York City.

15

To SEVERO MALLET PREVOST, Esq.,
Attorney for Appellant,
And to LOUIS S. PHILLIPS, Esq.,
of Counsel.

16 IN THE

SUPREME COURT OF THE UNITED STATES.

LUIS DE OTEYZA Y CORTEZ,
Appellant,

vs.

JOHN W. JACOBUS, etc., and ano

SOUTHERN DISTRICT OF NEW YORK, *City and County of New York*, } ss. :

17 MIGUEL SUAREZ GUANES, being duly sworn, says :

That he is Consul General of the Kingdom of Spain at the City of New York.

That on the 2d day of January, 1890, before Samuel H. Lyman, Esq., a Commissioner of the Circuit Court of the United States for the Southern District of New York, duly appointed and commissioned under Title 66 of the Revised Statutes of the United States relating to Extradition, deponent under the Treaty or Convention of Extradition between the United States of America and the Kingdom of Spain of January 5, 1877, and the Supplementary Treaty thereto of August 7, 1882, upon
18 information and belief, to wit, on telegrams from the authorities of the Island of Cuba, made a complaint against one, Luis De Oteyza y Cortez, charging him with embezzlement or criminal malversation of public funds committed within the jurisdiction of the said Kingdom of Spain, to wit, at the City of Havana, in the Island of Cuba, and asked for a warrant to apprehend the said Luis De Oteyza y Cortez to the end that the evidence of his criminality should be heard and considered.

That thereupon, and on or about the 2d day of January, 1890, the said Luis de Oteyza y Cortez, upon a warrant of the said Commissioner duly issued upon said complaint, was duly arrested by the Marshal of the United States for the Southern District of New York, and was produced before said Commissioner by said Marshal on or about the 3d day of January, 1890. 19

That thereupon deponent, through his counsel, requested time to lay before said Commissioner the legal evidence of the guilt of the accused, as provided in said treaty, and that such Commissioner in the exercise of his discretion allowed such time.

That thereafter and in due course such legal evidence was furnished, and a copy of the warrant of arrest and the depositions upon which such warrant was issued, and with other evidence and proof the same were presented to said Commissioner, and that he rendered his decision committing the said accused on the 13th day of March, 1890. 20

That thereafter the said Appellant applied to the Hon. E. Henry Lacombe, one of the Judges of the Circuit Court of the United States, for a writ of habeas corpus, upon which, after having been granted, argument was heard, and the said writ was discharged on the 18th day of April, 1890, and the said accused remanded to the custody of the said Marshal. 21

That thereafter the said Luis De Oteyza y Cortez, appealed from such decision, and the order thereon to the Supreme Court of the United States, and that deponent has been cited by your Honorable Court to appear upon the hearing of such appeal on the 2d Monday of October, 1890, and show cause why the order of the Hon. E. Henry Lacombe, above referred to should not be corrected.

22 That as deponent is informed and believes from the Record forwarded to this country from the Court wherein the proceedings against the accused for embezzlement or Criminal Malversation of Public Funds are pending in the Island of Cuba, where the crimes of the said accused were committed, and from other sources of information and belief of deponent, it is shown, that various parties aided and abetted the said accused and took part in the commission of the said crime of criminal embezzlement and malversation of public funds, and that some of them are under arrest in Cuba awaiting trial, and that various witnesses connected with said crime are in confinement in jail in Cuba awaiting the trial of said Oteyza and said other
23 parties, and that the trials of all of the said participants and the confinement of said witnesses are awaiting the result of the demand for the surrender of said Oteyza, and that besides the further investigation into the facts connected with said crime is also thereby delayed, all of which, by reason of the Appeal herein referred to being deferred until October next will cause, manifest loss, injury and damage, and obstruct and impede speedy justice in the Island of Cuba, to the great detriment of the demanding Government, and material and necessary witnesses may disappear or die meanwhile. That in addition to the coupons alleged to be stolen by said Oteyza he is charged with the abstracting
24 of a Book of Bonds of the Public Debt of Cuba, of the nominal par value of $500,000, and the chances of the recovery thereof are lessened by each day's delay.

That deponent therefore appeals to the International Comity existing between the United States of America and the Kingdom of Spain and to the Treaty of Extradition between them, and respectfully asks this Honorable Supreme Court that the appeal herein, above re-

ferred to, be advanced upon its calendar, and that argument thereupon be had forthwith. 25

MIGUEL SUAREZ.

Subscribed and sworn to before me this 3d day of May A. D., 1890.

GEORGE S. SCALLY,
Notary Public (193),
N. Y. Co.

DEPARTMENT OF STATE,
WASHINGTON, May 2, 1890. 26

THE HONORABLE, THE ATTORNEY-GENERAL:

Sir.—Some time ago application was made to this Department by the Spanish Minister for a preliminary warrant, looking to the extradition of one Luis de Oteyza y Cortez, charged with the embezzlement of public moneys in the Island of Cuba. The warrant was granted and the person charged was duly arrested, examined by a Commissioner and committed for surrender. A writ of *habeas corpus* was then obtained by the prisoner from Judge Lacombe, in the Circuit Court of the United States for the Southern District of New York, in order to test the legality of the Commissioner's commitment. 27 On the hearing or the writ, the prisoner was remanded into custody. From this decision of Judge Lacombe, an appeal has been taken to the Supreme Court of the United States. After the appeal was taken, counsel for the prisoner appeared before the Supreme Court, and had the appeal set down for a hearing in October next. As the case has been pending in one form or another, since January last, the representatives

of the Spanish Government are dissatisfied with this order, and desire to obtain a hearing of the new appeal on an earlier date. With a view to effect this, they propose to apply to the Supreme Court on Monday next, the 5th of May, for a modification of the order, and Mr. Olcott, of the legal firm of Olcott, Mestre & Gonzalez, who are acting in the case as counsel for the Spanish Government, desires to confer with you, in order to obtain the support of your Department in his application. It is not usual for the law officers of the United States to be called on to participate in extradition proceedings, but by the Extradition Treaty with Spain, as amended by the Treaty between the United States and that country of August 7, 1882, it is expressly stipulated that the legal officers of the country where the proceedings in Extradition are instituted, "shall assist the "Officers of the Government demanding the Extradition "before the respective Judges and Magistrates, by every "legal means within their * * * power." It, therefore, seems proper that, under the present circumstances, any countenance which you may give to the motion for an early disposition of the case should be granted.

I have the honor to be, Sir,

Your obedient servant,

JAMES G. BLAINE.

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Supreme Court of the United States.

LUIS DE OTEYZA Y CORTEZ, APPELLANT,

vs.

JOHN W. JACOBUS, ETC., AND MIGUEL SUAREZ GUANES, APPELLEES.

And now come the appellees, by their counsel, Emmet R. Olcott, and, on the affidavit and notice of motion heretofore served and filed, and proceedings had, and on the notice hereinafter set forth, and on the return to this Court, made by the clerk of the circuit court of the United States for the southern district of New York, renew the motion to advance the above-entitled cause and for an immediate argument.

Dated May 19, 1890.

EMMET R. OLCOTT,
Of Counsel for Spain, the demanding Government.

NOTICE.

Supreme Court of the United States.

LUIS DE OTEYZA Y CORTEZ, Appellant,
vs.
JOHN W. JACOBUS, etc., and MIGUEL SUAREZ GUANES, Appellees.

SIR: Please take notice that at the Capitol, in the city of Washington, District of Columbia, on the 19th day of May,

instant, at the opening of the Court, we will renew the motion heretofore made herein to advance the above-entitled case and for an immediate argument.

Dated New York, May 12th, 1890.

OLCOTT, MESTRE & GONZALEZ,
Attorneys for Appellees, 35 *Broadway*.

To SEVERO MALLET PREVOST, Esq.,
Attorney for Appellant.

[Endorsed:] Supreme Court of the United States. Luis de Oteyza y Cortez *vs.* John W. Jacobus, etc., and Miguel Suarez Guanes. Notice of renewal of motion.

Service of a copy of within notice hereby admitted.

New York, May 13th, 1890.

LOUIS S. PHILLIPS,
Of Counsel.